

(28,249)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 892.

THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW, J. G.  
HESTER, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

INDEX.

	Page.
Caption .....	<i>a</i>
Transcript of record from the district court of the United States for the western district of Louisiana.....	1
Caption .....	1
Bill of complaint and order thereon.....	1
Answer .....	11
Argument and submission on plea in bar.....	20
Note of evidence on trial of plea in bar.....	21
Offers of documentary evidence.....	21
Testimony of D. M. Green.....	25
Testimony of D. M. Green (recalled).....	34
Opinion of the court on plea in bar.....	39

	Page.
Order overruling plea in bar and appointing special master.....	41
Note of evidence at hearing before special master.....	42
Evidence at hearing before special master.....	48
Withdrawal order of December 15, 1908.....	48
Telegram, Commissioner of General Land Office to register and receiver, December 15, 1908.....	49
Letter, Commissioner to register and receiver, December 15, 1908 .....	50
Non-mineral affidavit of Thomas J. Stockley and notice of in- tention to make final proof.....	52
Final receipt No. 60,769 issued to Thomas J. Stockley.....	56
Withdrawal order of July 2, 1910.....	58
Letter, Commissioner to register and receiver, February 27, 1912 .....	61
Letter, Commissioner to register and receiver, July 16, 1910....	62
Stipulation as to testimony at hearing on contest of entry of Thomas J. Stockley.....	64
Testimony of W. A. Pyron.....	65
L. B. Webster.....	76
W. W. Bell.....	80
George M. Vaughn.....	87
Thomas J. Stockley.....	92
W. R. Thomas.....	96
S. A. Guy.....	98
Lease, Stockley to Gulf Refining Co. of La., March 17, 1910....	101
Opinion of register and receiver on contest of entry, March 1, 1913 .....	106
Decision of Commissioner of General Land Office, December 22, 1913 .....	108
Letter, Director of Geological Survey to Commissioner, March 2, 1914.....	115
Decision of Secretary of Interior denying rehearing on contest, August 26, 1915.....	118
Decision of Secretary of Interior, July 9, 1915, on appeal from General Land Office.....	119
Letter of Commissioner of General Land Office, January 21, 1916, to register, cancelling entry.....	123
Final receipt on form No. 4-140, in use in March, 1891.....	124
Final receipt on form No. 4-196, in use March 2, 1891.....	126
Final receipt on form No. 4-140, issued to Svan Hoglund Au- gust 6, 1907, and register's certificate.....	127
Statement by James W. Neal as to production and value of oil removed by Gulf Refining Co., etc.....	129
Extracts from instructions by Commissioner of General Land Office, issued June 1, 1908.....	132
Report of special master.....	138
Exceptions of defendants to report of special master.....	152
Opinion of the court.....	161
Decree .....	164
Petition of defendants for appeal and order allowing same.....	169



# INDEX.

iii

	Page.
Assignment of errors.....	170
Bond on appeal.....	175
Order of court on contents of record on appeal.....	177
Stipulation as to record and as to certain facts.....	179
Clerk's certificate.....	185
Citation..... (omitted in printing) ..	185
Argument and submission .....	186
Opinion of the court.....	186
Judgment .....	199
Petition for appeal and allowance.....	200
Assignment of errors.....	201
Appeal bond.....	205
Stipulation for transmission of original exhibits.....	207
Clerk's certificate.....	207
Citation and service.....	214

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on the Third Monday in November, A. D. 1920, at New Orleans, Louisiana, Before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

THOMAS J. STOCKLEY et als., Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Be it remembered, That heretofore, to-wit, on the 19th day of April, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3521, as follows, to-wit:



UNITED STATES DISTRICT COURT, FOR THE  
WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs. No. 1166 In Equity.  
THOMAS J. STOCKLEY, ET AL.,  
Defendants.

APPEAL TAKEN BY THE DEFENDANTS, TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS, FIFTH CIRCUIT.

1 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1166 In Equity.

Thomas J. Stockley, Robert L. Stringfellow, J. G.  
Hester, W. K. Henderson, Jr., Natalie Oil Com-  
pany, and the Gulf Refining Company of Louisiana,  
Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisi-  
ana sitting within and for the Shreveport Division:  
The United States of America, by its Solicitor, Rob-  
ert A. Hunter, Special Assistant to the Attorney Gen-  
eral, acting herein under the direction and by the au-

thority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Thomas J. Stockley, a citizen of the State of Louisiana, and a resident of the Parish of Caddo, in the Western District of said State;

Robert L. Stringfellow, a citizen of the State of Louisiana, and a resident of the City of Shreveport, in the Western District of said State;

J. G. Hester, a citizen of the State of Oklahoma, and a resident of the City of Ardmore in the Eastern District of said State;

W. K. Henderson, Jr., a citizen of the State of Louisiana, and a resident of the City of Shreveport, in the Western District of said State;

Natalie Oil Company, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Shreveport, in the Western District of said State; and

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, domiciled in the City of New Orleans, in the Eastern District of said State, said corporation having an office and doing business in the City of Shreveport, Western District of Louisiana, with W. B. Pyron, a resident of Shreveport, Louisiana, as its duly authorized agent for the service of process;

and thereupon complains and shows unto your Honor:

# I.

That on and before December 15, 1908, plaintiff was the owner, as a part of its public domain, of a certain tract of land situated in the Parish of Caddo, Western District of Louisiana, which

had theretofore been surveyed in part, and which has since been fully surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and designated as Lot Five (5) of Section Five (5) in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing twenty-nine and eighty-seven hundredths (29.87) acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner, and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

## II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," ratified and confirmed and continued in full force and

effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated, but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

### III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill three wells known as Gulf Refining Company's Stockley Nos. 1, 3 and 4, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.



## IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and has become effective to withdraw said land from location, entry and other appropriation.

## V.

Plaintiff is informed and believes that the oil and gas withdrawn from the aforesaid tract of land, as above set forth, were extracted therefrom under the color of a pretended lease made and executed on March 17, 1910, by Thomas J. Stockley to the Gulf Refining Company of Louisiana, which said lease is of record in Book 59, page 209 of the Conveyance Records of Caddo Parish, Louisiana.

4 Plaintiff states that the said Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana, defendants herein, have no right, title or interest in and to the said tract of land, but acting under the said pretended lease, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and that defendant the Gulf Refining Company of Louisiana, drilled wells thereon, as above set forth, and has taken therefrom a large quantity of oil and gas, which it, the said Gulf Refining Company of Louisiana, has converted

to its own use, and has paid a royalty out of the market value of the said oil and gas, to the other defendants herein, who acquired a pretended interest in said royalty from said defendant Thomas J. Stockley, the amount of which oil and gas so withdrawn from the said tract of land, and of which royalty so paid, being to plaintiff unknown.

The exact quantity of the oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

#### VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

#### VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Fifty-five Thousand (\$55,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

#### VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.
2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.
3. That the aforesaid lease made by Thomas J. Stockley on March 17, 1910, to the Gulf Refining Company of Louisiana, recorded in Book 59, page 209, of the Conveyance Records of Caddo Parish, Louisiana, be declared null and void, and that the same be cancelled and annulled.
4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.
5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.
6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improve-

ments and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the  
 6 quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henerson, Jr., and Natalie Oil Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court that an order be granted and entered, directed to the Gulf Refining Company of Louisiana, and J. G. Hester, defendants herein, and be served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

### AFFIDAVIT.

United States of America,  
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July

2, 1910; and that from the examination of such  
7 lands, and from examination of the records  
of the General Land Office and of the local  
Land Office in the State of Louisiana, he has knowledge  
of the facts set forth in the foregoing bill of complaint,  
and that the facts and allegations therein contained  
are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

(Seal) C. W. CALHEATT,  
Deputy Clerk U. S. District Court,  
Northern District of California.

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that the Gulf Refining Company of Louisiana, and J. G. Hester are not inhabitants of the Western District of Louisiana and are domiciled outside of said District,

It is, therefore, ordered that the said absent defendants be, and they are hereby directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15 day of Sept., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, respectively, wherever found.

Thus done and signed this 2nd day of Aug., 1917.

GEO. WHITFIELD JACK,  
United States Judge.

Indorsed: No. 1166 in Equity. Bill of Complaint.  
Filed Aug. 2, 1917.

8 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1166 In Equity.

Thomas J. Stockley, Robert L. Stringfellow, J. G. Hes-  
ter, W. K. Henderson, Jr., Natalie Oil Company,  
and the Gulf Refining Company of Louisiana, De-  
fendants.

And now come all of the defendants herein, to-wit:  
Thomas J. Stockley, Robert L. Stringfellow, J. G. Hes-  
ter, W. K. Henderson, Jr., Natalie Oil Company, and  
the Gulf Refining Company of Louisiana, and answer  
the bill of complaint as follows:

# I.

Defendants admit that on and before December 15th,  
1908, plaintiff was the owner as part of its public  
domain, subject, however, to the rights of Thomas J.  
Stockley under his homestead entry, hereinafter more  
specifically set out, of the tract of land described in  
the bill as Lot Five (5) of Section Five (5), Township  
Twenty (20) North, Range Sixteen (16) West, Louisi-  
ana Meridian, situated in the Parish of Caddo, Western  
District of Louisiana, as shown by plat of survey ap-  
proved March 28th, 1917, by Clay Tallman, Commis-  
sioner of the General Land Office and Ex-Officio Sur-  
veyor General for the State of Louisiana.

But defendants show that there is not, nor has there  
ever been, such a tract of land as Lot Five (5) of  
Section Five (5), Township Twenty (20) North, Range  
Sixteen (16) West, Louisiana Meridian, and that the

purported survey showing such lot is illegal, null and void, and the execution and approval thereof beyond the power, jurisdiction and authority of the General Land Office of the United States, for the reason that the said tract of land was not at the date of said survey in the ownership of the United States, but was in private ownership as hereinafter more fully appears.

And defendants further show that such ownership of said property as was held by the United States on and before December 15th, 1908, was conditional and imperfect and subject to the rights of Thomas J. Stockley under his homestead entry thereof made on November 13th, 1905, as hereinafter is more fully set out.

Defendants further deny that on the aforesaid date the plaintiff was entitled to the possession of the above described land, and avers that the rights of the plaintiff therein were subject to the said valid homestead entry of Thomas J. Stockley and his full and complete legal right to perfect same and to receive patent thereunder.

## II.

Defendants show that none of the allegations of Article II of the bill of complaint are pertinent or relevant to any of the issues involved in this case, and that the same call for neither affirmation nor denial, and move that all of the bill therein contained be accordingly dismissed; but under reservation of their rights, defendants show that none of the withdrawal orders referred to could, in any way, have affected the right of the said Stockley to perfect his homestead entry and to carry the same to patent, and defendants specially deny that the said withdrawal orders had such effect or could have had such effect.



## III.

Defendants deny that they entered upon or took possession of the property herein involved in violation of any of the rights of the plaintiff or contrary to its laws, or without any valid title, lawful right or authority, or in bad faith; but they aver that lawfully and under a valid title they are in possession of said property, and that the defendant, Gulf Refining Company of Louisiana, under a lease from Thomas J. Stockley, the owner of said land, drilled thereon three wells, known as "Gulf Refining Company's Nos. 1, 3 and 4," from which it produced some oil, the amount and value of which is set out further in this answer.

## IV.

Defendants say that all of the allegations of the Fourth Article of the Bill of Complaints are impertinent, for the reason that none of these defendants claim any interest in the property under any discovery or location under the mining laws of the United States; but defendants show that they claim the property under a valid title based upon the said homestead entry of the said Thomas J. Stockley, as is hereinafter  
10 fully set out.

## V.

Defendants admit that the oil withdrawn from the aforesaid tract of land was extracted by the Gulf Refining Company of Louisiana, operating under a valid mineral lease, executed on March 17th, 1910, by Thomas J. Stockley to the Gulf Refining Company of Louisiana, which said lease is of record in Conveyance Book 59, page 209, of the records of Caddo Parish, Louisiana.

Defendants further deny that they have no right, title and interest in and to the said tract of land, or that the said lease is a mere pretended one, but defendants say that they held and hold the possession of the said tract under a valid title, and that the Gulf Refining Company of Louisiana drilled thereon under a valid lease from the owner of the land, through operations under which lease it has produced oil, which it has sold and disposed of, after having first delivered as royalty to the other defendants herein, as provided in their contracts, their proportion thereof.

The quantity of oil so produced, up to July 31st, 1917, was eighty-three thousand three hundred and  $82/100$  (83,300.82) barrels, of the market value of sixty thousand and two hundred and one and  $94/100$  (\$60,201.94) Dollars; out of the proceeds of the sale of which, royalties were paid by the Gulf Refining Company of Louisiana to its co-defendants as follows:

To Thomas J. Stockley, Two Thousand Two Hundred and Six and  $25/100$  Dollars, \$2,206.25;

To W. K. Henderson, Jr., (a transferee of Thos. J. Stockley), Eight Hundred and Eighty-three and  $46/100$  (\$883.46) Dollars; to H. L. Heilperin, agent for W. K. Henderson, Jr., One Hundred and Eighty &  $8/100$  Dollars (\$108.08); or a total to the said W. K. Henderson, Jr., of Nine Hundred and Ninety-one &  $54/100$  Dollars, \$991.54;

To Natalie Oil Company, (a transferee of Thos. J. Stockley, through J. G. Hester), One Thousand Five Hundred and Twenty-six &  $44/100$  Dollars (\$1,526.44); to H. L. Heilperin, agent for Natalie Oil Company, Eighty-one &  $06/100$  (\$81.06) Dollars; or a total to the said Natalie Oil Company of One Thousand Six Hundred and Seven &  $50/100$ , \$1,607.50;

and that there is being held up by the Gulf Refining Company of Louisiana (pending settlement of litigation) the following:

For account of said W. K. Henderson, Jr., Two Thousand Thirty-five & 28/100 Dollars, \$2,035.28;

For account of said Thos. J. Stockley, Seven Hundred and Twenty-six & 44/100 Dollars, \$726.44;

11 and that the remainder, seventy-two thousand seven hundred and seventy-four & 20/100 (72,774.20) barrels of oil of the market value of Fifty-two Thousand Sixty Hundred and Thirty-four & 93/100 Dollars, \$52,634.93, was retained by the said Gulf Refining Company of Louisiana for its own use as owner; all of which it had the right to do.

#### VI.

Defendants deny that they are unlawfully trespassing on said land, but say that they are in possession of the said property under a valid title with full rights of ownership and that the plaintiff has no interest therein

#### VII.

As aforesaid, the value of the oil taken from the said wells amount to the sum of Sixty Thousand Two Hundred and One & 94/100 (\$60,201.94) Dollars, and defendants deny that they or any of them acted in bad faith in the premises; all of their acts and conduct therein being in absolute good faith and under a just and valid title.

#### VIII.

Further answering, defendants say that on November 13th, 1905, Thomas J. Stockley made homestead

entry of the fractional Southwest Quarter of the Northeast Quarter and Southeast Quarter of Section Five (5) and Northwest Quarter of Northeast Quarter of Section Eight (8) Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, containing 71.25 acres of land, according to plat of survey made by A. W. Warren, U. S. Deputy Surveyor, and approved on the 31st day of August, 1839, on file in the United States Land Office, which said tract of land includes the property herein in controversy; and that on January 5th, 1909, said Thomas J. Stockley made final proof under said homestead entry, and that the receiver's receipt upon the final entry of the said land under the homestead laws issued to the said Thomas J. Stockley on January 16th, 1909.

And defendants show that within two years from the date of the issuance of said receiver's receipt upon the final entry of the said land under the homestead laws, no contest or protest against the validity of the said entry was initiated against the said Thomas J. Stockley, and that at the expiration of two years from the issuance of said receiver's receipt the said

12      Stockley was, under the laws of the United States, and particularly under the Act of Congress approved March 3rd, 1891, the absolute owner of said land and was entitled to patent thereto, which the Department of the Interior was without right or power to deny him. All of which defendants allege to be true and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof pray that the said bill be dismissed and that defendants go hence with their costs in this behalf sustained.

## IX.

In the event the Court does not sustain the above plea in bar, then defendants would show that the homestead entry of the said Stockley was nevertheless valid and legal, and that the United States has no right or title in the said land and no right to maintain this suit for the following reasons:

On March 10, 1897, said Thomas J. Stockley made settlement upon the land entered by him as aforesaid, making formal entry thereof on November 13th, 1905, and making final proof on January 5th, 1909, which was completed by the filing of non-mineral affidavit, final payment and issuance of receiver's receipt on January 16th, 1909.

On February 27th, 1912, the Commissioner of the General Land Office, acting under circular of Department of the Interior of January 19th, 1911, ordered a contest of said homestead entry upon the ground that the land was mineral in character and that Thomas J. Stockley knew, or should have known by surrounding conditions, that the land was so valuable at the time final proof was made; which contest was thereupon instituted and fixed for hearing before the Register and Receiver of the United States Land Office at Baton Rouge.

Defendants show that upon such hearing, no evidence whatever was introduced showing or tending to prove the truth of the charge as made in said contest, and that, accordingly, said contest was dismissed and the entry held intact; from which said decision, concurred in by both Register and Receiver, no appeal was taken.

Defendants show that under said circular of January 19th, 1911, it is specially provided that all pro-

13       ceedings thereunder shall be governed by the Rules of Practice of the General Land Office, and that Article 51 of such rules provides that, in the absence of an appeal or of a motion for new trial, decisions of the Register and Receiver shall be final, and that same cannot be disturbed, except in case of fraud or gross irregularity or of disagreement in the decision between the Register and Receiver; and defendants show that in this case, there was no fraud nor gross irregularity nor disagreement between the Register and Receiver. And defendants show that though no appeal was taken from said decision, the Commissioner of the General Land Office proceeded, in the absence of parties and without notice to Stockley, to reverse the decision of the Register and Receiver, which action on the part of the Commissioner of the General Land Office was wholly arbitrary, and denied to said Stockley due process of law.

Defendants show that the said Stockley appealed to the Secretary of the Interior, assigning among other errors, as error the arbitrary conduct of the Commissioner of the General Land Office in reversing the decision of the Register and Receiver in the absence of an appeal, but that the Secretary of the Interior affirmed said decision, all of which was arbitrary, illegal and void.

Defendants show that the decision of the Secretary of the Interior cancelling the said homestead entry was further arbitrary, illegal and void in this, that the said Secretary of the Interior held in error of law, that the effect of the executive withdrawal of December 15th, 1908, was to suspend the homestead entry aforesaid, and that the same could not be perfected thereafter, and that the Receiver's receipt issued as aforesaid operated no effect; and defendants show that the decision of the Secretary of the Interior was further null and void in

that the said Secretary held, contrary to law, that the title of the said Stockley had not become perfect under the confirmatory provisions of the act of Congress approved March 3rd, 1891, and that a contest could be directed against the homestead entry more than two years after the issuance of said final receiver's receipt.

And defendants further show that the decision of said Secretary was erroneous, null and void in that the said Secretary held arbitrarily, without any evidence whatever to support his finding, that the said lands were, at the date of final proof, mineral lands in the sense such term is used in the land laws of the United States.

14 The defendants, therefore, show that the decision of the Secretary of the Interior, cancelling said entry, has no legal force or effect, and that the said entry is still intact; and, Receiver's receipt having issued on the final entry of the land, said Stockley's title thereto is valid, and that the United States has no interest therein and can take nothing by this suit.

Wherefore, having made full and complete answer to the aforesaid bill of complaint, defendants pray that the same be dismissed and for judgment in their favor for all costs in this behalf sustained, and for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,  
THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed: No. 1166 in Equity. Answer. Filed Sep. 29, 1917.

15

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered opened.

Present & presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1166 in Equity.

Thos. J. Stockley, Et Al.

This cause came on this day for trial, according to previous assignment, upon the Plea in Bar set up in defendant's answer. Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for Complainant, and Mr. S. L. Herold, appearing as Solicitor for Defendants. Evidence was adduced by complainant and defendant and closed, and thereupon, the matter was argued by counsel and submitted and taken under advisement by the Court, it being agreed by and between counsel that decision may be rendered by the Court later in New Orleans and counsel to file briefs in New Orleans within ten days.

It is ordered that Court adjourn until 10 o'clock tomorrow morning.



16

## NOTE OF EVIDENCE.

United States District Court, Western District of  
Louisiana.

United States of America,

vs. No. 1166 In Equity.

Thomas J. Stockley, Et Al.

On trial of above cause before Honorable Rufus E. Foster, United States District Judge, at Shreveport, Louisiana, March 1, 1918, on Pleas in Bar set up in Defendants' Answer:

Appearances:

Robert A. Hunter, Esq., Special Assistant to the  
Atty. General, Solicitor for Complainant.

S. L. Herold, Esq., Solicitor for Defendants.

Defendants' Evidence.

By Mr. Herold:

Counsel for defendant offers in evidence Application of Thomas J. Stockley to enter homestead laws, of date November 6, 1905. Filed and marked "Defendant's Ex. 1."

2. Counsel for defendant also offers in evidence Receiver's Certificate No. 10817, in connection with said entry, together with the Non-Mineral Affidavit filed therewith, and oath of the entryman to the homestead affidavit. Filed as "Deft. Ex. 2."

3. Counsel for defendant also offers in evidence copies of letters in connection with homestead entry of

Thomas J. Stockley, Baton Rouge, No. O-3472, certified to under date of May 16, 1912, by H. W. Sandifer, Recorder of the General Land Office. (Deft. Ex. 3.)

By Mr. Hunter:

I wish to enter an objection in order to preserve my rights which I can discuss on the trial of the merits; that the evidence offered is incompetent, irrelevant and inadmissible for the reason that defendant is seeking to attack collaterally the Rules and Decisions of the Secretary of the Interior cancelling Stockley's homestead entry, and that said Ruling cannot be collaterally attacked in this proceeding.

The objection is overruled. Exception.

(Document filed as Deft. Ex. "3.")

By Mr. Herold:

4. Counsel for defendant offers in evidence Receipt No. 60769, issued in connection with the Final Homestead Entry of Thomas J. Stockley.

Counsel for Plaintiff makes same objection to the offering of this document in evidence as above.

Same Ruling of Court. Exception.

(Document filed in evidence—Deft. Ex. "4.")

Defendant's evidence closed.

## Plaintiff's Evidence.

By Mr. Hunter:

1. Counsel for plaintiff offers in evidence certified copy of Decision of the Commissioner of the General Land Office, in letter directed to the Register and Receiver at Baton Rouge, Louisiana, dated December 22, 1913, relative to the homestead entry of Thomas J. Stockley. Filed as Pltff's. Ex. "A."
2. Also counsel for plaintiff offers and files in evidence Decision of the Secretary of the Interior, dated July 9, 1915, on appeal from the General Land Office, in the matter of the homestead application of Thomas J. Stockley. Pltff. "B."
3. In order to shorten this offering, I wish to offer in evidence certified copy of the record in the matter of the homestead application of Thomas J. Stockley, certificate dated September 14, 1917. Plaintiff's Ex. "C."
- 18 4. Counsel for plaintiff also offers in evidence Receipt issued to Thomas J. Stockley, January 16, 1909 (certified copy). Document filed as Plaintiff's Exhibit "D."
5. Counsel for plaintiff offers in evidence Instructions by the Commissioner of the General Land Office, under order of the Secretary of the Interior, dated June 1, 1908, contained in printed pamphlet. Plaintiff's Ex. "E."
6. Counsel for plaintiff also offers in evidence certified copy of the withdrawal order of December 15, 1908. Ptf's. Ex. "F."

7. Counsel for plaintiff also offers in evidence certified copy of Withdrawal Order of July 2, 1910. Pltff's Ex. "G."

8. Counsel for plaintiff also offers in evidence copy of Final Receipt certified by the General Land Office as being in use in March, 1891, prior to the passage of the Act of March 3, 1891; also

9. Offers in evidence certified copy of the Final Certificate which was in use March 2, 1891, prior to the passage of the Act of March 3, 1891. (Plaintiff's Ex. "I.")

10. Counsel for plaintiff also offers in evidence letter from the Commissioner of the General Land Office of date December 15, 1908, to the Register and Receiver at Natchitoches, Louisiana. (Plaintiff's Ex. "J.")

11. Counsel for plaintiff also offers in evidence certified copy of telegram from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana, dated December 15, 1908, by reference.

12. Counsel for plaintiff also offers in evidence copies of Receiver's Receipts and Register's Certificates issued on the homestead entry of Swan Hogland. Plaintiff's Ex. "K."

13. Also counsel for plaintiff offers certified copy of Receiver's Receipt issued August 6, 1907, to Swan Hogland and Final Certificate issued August 6, 1908, to said Hogland. Pltff. Ex. "L."

19

## Agreement.

It is agreed by and between counsel that the said Certificate, Plaintiff's Exhibit "L," did not appear in the transcript in the case when same was filed before the Supreme Court on agreed statement of facts, to which transcript reference is made.

By Mr. Hunter:

I wish to offer the testimony of Mr. D. M. Green, relative to these receipts—the purpose is to explain the procedure in the Land Office in connection with the issuance of Receiver's Receipts and Final Certificates.

MR. D. M. GREEN, being thereupon duly sworn, testified as follows:

## Direct Examination.

By Mr. Hunter:

Q. Mr. Green, where do you live?

A. Washington, District of Columbia.

Q. Do you hold any official position under the United States Government, if so, what?

A. Law examiner, in the General Land Office.

Q. How long have you been connected with the General Land Office?

A. Since July, 1909.

Q. Since July, 1909?

A. Yes, sir.

Q. What are your duties in that office?

A. To examine cases and prepare the decisions for the Commissioner's signature, and pass upon legal propositions connected with the public land laws in so far as the Commissioner has jurisdiction over them.

Q. Are you familiar with the records kept in the General Land Office, in a general way, as to the kind of records that are kept?

A. I am.

Q. Are you familiar with the practice prevailing at the present time and which prevailed at the time of the issuance of the Receipt to Thomas J. Stock-  
20 ley in this case?

A. I am.

Q. With respect to the issuance of receipts by the Receiver and certificates by the Register of the local land offices?

A. I am.

Q. What was the practice prevailing in the local United States land offices throughout the United States on June 16, 1909, with respect to the issuance of Receiver's Receipts for the payment of money in connection with the land entries, and of Register's Certificates?

A. The Receiver was required to issue a receipt—

By Mr. Herold:

I think, if the Court please, if there are any rules of the land office, the rule itself would be the best evidence.

The Court:

Well, there are rules I take it.

Mr. Hunter:

There are rules, yes, sir; I have offered in evidence copy of the rules, but I wish to explain the procedure.

The Court:

It is for the information of the Court.

Mr. Hunter:

Yes, sir.

The Court:

I suppose I would take judicial cognizance of these rules even if not in evidence. It does not make any difference any way. I would like to hear Mr. Green anyhow.

A. The procedure in the Land Office was changed July 1, 1908, when they adopted what they call the "serial system." They gave serial numbers to all cases, starting with one and going on up. The serial numbers were for the purpose of readily identifying the cases, and these rules that were in effect at the time Stockley's receipt was issued went into effect on July 1, 1908, and under the form of receipt so adopted the number of that was given—4-131—and each receipt had a number, starting with number one and going up. Every receipt had to be accounted for. The receipts were numbered before they were sent to the Receivers. Every receipt had to be accounted for. Every payment of money made to a Receiver, the Receiver must issue a receipt for that, no matter what the money was for; whether it may be for homestead entry, sale  
 21 of Platt, sale of public property, records, or anything whatever, he must issue that receipt; and he was prohibited from holding any money in his office longer than 24 hours without issuing one of those receipts.

By the Court:

Q. Now this receipt—when you speak of receipt, you don't mean when a man completes his homestead entry by living on it the required time, but a commutor who simply paid to get the receipt for money?

A. When he pays his money.

Q. What does he get from the Register?

A. If the final proof is accepted he gets a final certificate.

Q. Gets final certificate from the Register?

A. Yes, sir.

Q. Is that issued by the local land office?

A. Yes, sir.

Q. That issues prior to the patent?

A. Yes, sir; by the local land office.

Q. He gets a receipt for the money he pays then as public money?

A. Yes, sir.

Q. And then he gets final certificate from the Register of the local land office?

A. Yes, sir; but does not issue until the proof is acceptable.

Q. Who accepts proof?

A. The Register and Receiver.

Q. Together, and the General Land Office in Washington has nothing to do with that?

A. General Land Office in Washington has the authority to review it and to find whether there are any reasons why it should not have been accepted.

Q. Within what time?

A. According to the proviso of the statute of March 3, 1891, within two years from the issuance.

Q. Then, if there is no review, the patent issues as a matter of course. The patent issues from the General Land Office?

A. Yes, sir.

22 Q. Carries the signature of the Commissioner, does it not?

A. Signature of the Recorder of the Land Office; but it must be approved before the Recorder can issue the patent. May I say, that the receipt—this form of receipt—did not imply that a final certificate had been issued, but that one would be issued.



By Mr. Hunter:

Q. I show you certified copy of the Receipt issued to Thomas J. Stockley in this case, and ask you to state when the form of receipt issued to Stockley was adopted by the Land Office?

A. It was adopted and put in use on July 1, 1908.

Q. Was that the form in use at the time Thomas J. Stockley made his final proof?

A. It was.

Q. Mr. Green, down at the bottom of that receipt there are certain words written in ink—"Less commissions suspended in unofficial moneys"—I will ask you to state what those words mean?

A. When moneys are paid to the Receiver of public moneys and they are earned, he covers these into the United States Treasury as required; when he receives moneys that are not earned, he holds them in a special account of his, known as "Unearned" or "Unofficial fees account," until they shall have become earned; and when they shall have become earned, then he takes them and covers them into the United States Treasury. When they are held in his unofficial fees account that implies that these moneys have not been earned for some reason, and that they are simply being held by him in his account until he has issued a receipt for them.

Q. Did I read correctly the words that are written at the bottom of that receipt?

A. Yes, sir; "Less commissions suspended in unofficial moneys, \$1.76."

Q. State whether or not that receipt showed an approval of the entry or final proof of Thomas J. Stockley by the local land officers?

By Mr. Herold:

Objected to on the ground that this is a question of law that the Court will have to determine.

23           Objection is overruled by the Court.

A. It did not; simply showed the payment to the Receiver of that sum of money.

Q. Are you familiar with the custom which prevailed in the land offices of the United States at the time that receipt was issued, with respect to what was done when an entry was approved?

A. Yes, sir; I am.

Q. Please state what that custom was?

A. After the final proof was submitted and accepted and all of the fees and commissions paid to the Receiver and the Register and Receiver were satisfied that the entryman was qualified to make the entry—that is, as to his citizenship, etc.—and that his proof showed that he had complied with the public land laws, and that the lands were of the character for which his entry could be made—agricultural lands—then they accepted his proof and issued to him a final certificate. That final certificate is on the form provided by the Land Department, and is issued, and was issued at the time that Stockley submitted his final proof—although never issued to Stockley—in duplicate, one copy being given to the entryman and the other transmitted to the General Land Office.

Q. I will ask you to examine the receipt and the Certificate issued to Hogland—Swan Hogland—certified copy of which I now hand you, and request you to state whether or not the papers that were issued in that instance indicate an approval by the local land office, of Hogland's entry?

A. Yes, sir; form of receipt and form of certificate that was issued at the time that this entry was proved. I will state, however, this was the second proof, not the first. This is the second one, and this is the form that is in use now, and was in use at the date that Stockley submitted his final proof.

By the Court:

Q. This is final certificate?

24 A. Yes, sir; this is the present form of final certificate. That is the form of receipt. This is memorandum receipt; the original receipt was given to Hogland in this case, upon the payment of this money.

By Mr. Hunter:

Q. Now, at the time of the issuance of the receipt in the Hogland case, the receipt by the Receiver, the Register of the Land Office issued to Hogland a final certificate, did he not?

A. Yes, sir.

Q. Were these acts performed simultaneously?

A. Not necessarily so; they were in this case at this time. This was issued under the direction of the Secretary.

Q. Did they bear same date—the receipt and the certificate?

A. They do in this case.

Q. Do they bear the same number?

A. Yes, sir; they do in this case; not necessarily, however.

Q. I understood you to state that the form of receipt issued to Hogland, October 10, 1913, and the certificate issued to him on that date, which I have just shown you, were the form in use at the time of Stockley's entry?

A. Yes, sir; they were.

Q. I mean at the time of Stockley's final proof?

A. Yes, sir.

Q. I will ask you to state then whether or not, according to the practice which prevailed in the land office at the time Stockley made his final proof, the issuance to him of a receipt on the form which I have shown you, constituted, within that practice, an approval of his final proofs?

A. It did not.

Q. According to the practice prevailing in the land office at the time Stockley made his final proof, what was necessary to be issued to him in order to constitute a proof of his entry and final proofs?

A. The passing on the final proof by the local officers and the acceptance of that final proof and the issuance of a final certificate thereupon.

Q. Was there any final certificate issued in the Stockley case?

A. There never was.

25 Q. Now, from your knowledge of the records in the land office, I will ask you to state what practice prevailed in the Land Offices of the United States with respect to the issuance of Receiver's Receipts and Register's Certificates at the time of the passage of the Act of March 3, 1891, and prior thereto?

By Mr. Herold:

If your Honor please, this is entirely irrelevant.

The Court:

I think you have all the evidence that you need.

Mr. Hunter:

I simply wanted to show what the conditions were at that time with respect to the issuance of this receipt.

Objection sustained.

## Cross Examination.

By Mr. Herold:

Q. Mr. Green, in connection with the final entry, under the homestead laws, there is nothing to be paid by the entryman except the fees and commissions, are there?

A. Fees and commissions and testimony fees.

Q. Where the homesteader lives out his time under the statute, he does not pay for the land, but merely pays fees and commissions?

A. That is all; unless he commutes.

Q. But I am speaking of a case where he lives out the time required under the statute?

A. Yes, sir.

Q. In the Hogland case there was a commutation?

A. There was a commutation, after the Secretary rendered a decision to the effect that he had not lived on the land long enough to entitle him to prove up under the five year rule; and the Secretary held that he could commute, if he wanted to—having lived on it fourteen months.

Q. So that, in fact, Hogland commuted his entry?

A. Yes, sir; he commuted under that rule.

Q. The commutation is a purchase?

A. Yes, sir.

26 Q. Mr. Green, is it not the usual course for the receipt for final entry to issue before the Certificate of final entry is issued. In other words, does the certificate issue until after the entryman has paid fees and commissions?

A. The receipt must be issued on the same day that the man pays his money.

Q. Whereas, the Certificate may issue any time thereafter?

A. Any time thereafter.

By the Court:

Q. He has to pay his money before the local office can properly issue the certificate?

A. Yes, sir.

By Mr. Herold:

Q. The receipt is signed by the Receiver and the certificate by the Register?

A. Yes, sir.

Q. The two officers act independently in this respect—that is, one document is signed only by the Receiver and the other one by the Register?

A. In that respect the Receiver is the only one authorized to receive money and the Register the only one authorized to sign the certificate.

Evidence closed.

27           At the request of Mr. Hunter, MR. GREEN was recalled, and thereupon, having been heretofore sworn, testified as follows:

Direct Examination.

By Mr. Hunter:

Q. Mr. Green, I will ask you what was the practice in the land offices of the United States with reference to the issuance of final receipts and certificates in 1891?

Objected to by counsel for defendant.

Objection sustained.

By Mr. Hunter:

Q. I will ask you to state then, Mr. Green, whether or not you are familiar in any way, and if so, in what

way, with the practice that prevailed in the land offices of the United States with respect to the issuance of final receipts and certificates in 1891?

A. I am, on account of passing on great many cases where the proofs were submitted and the receipts and certificates were issued prior to or during 1891 or prior thereto, and by a study of the instructions issued to the Registers and Receivers, by the Land Department, instructing them how to issue these receipts and Certificates, and how to pass upon proofs.

Q. Have you examined receipts and certificates issued at that time?

A. I have; a great many of them.

Q. Are they all of the same form and tenor?

A. All after the instructions issued after 1886 to the Register and Receiver up until the time of the change of procedure, July 1, 1908.

Q. What was the custom then which prevailed in connection with the issuance of receipts and certificates, in 1891?

A. According to the instructions that were issued to Registers and Receivers, as soon as final proof was submitted by the entryman, the local officers—the Register and Receiver, were to examine that proof, to pass upon the qualifications of the entryman and to see that he was qualified to make his entry; and if he was qualified, and the proof was sufficient, to accept that proof as sufficient and to collect from him the fees and commissions, and immediately upon the collecting of fees and commissions, after the acceptance of

28 the final proof, to issue to him a receipt upon final entry. The Receiver did that—and simultaneously, the Register issued a final certificate—both bearing same number. The Receiver's receipt, upon final entry, and the Register's final certificate bore the same number, and unless they did bear the same num-

ber and were issued on the same date, they were required to explain to the Commissioner of the General Land Office why they did not, because of the discrepancy.

Q. State whether or not, under the practice then prevailing, a final receipt was issued separately and independently of the certificate, or whether they were both issued at the same time?

A. They were both issued at the same time; although one was issued by the Receiver—the receipt was issued by the Receiver—and the final certificate by the Register; and simultaneously, on the same date, and bearing the same number.

Q. State whether or not, under the practice prevailing at that time, the receipt for the money issued before the entry was approved.

A. No, sir; it did not. The entry had to be passed upon and approved and the proof had to be passed upon and accepted before the receipt could be issued.

Q. And at the same time, certificate was issued?

A. At the same time; simultaneously.

Q. Now, under the practice prevailing at the time Stockley's final proof, was it necessary that the final certificate issue at the time the receipt was issued?

A. No, sir; it was not. The final certificate may never be issued.

By the Court:

Q. There is no law requiring that to be done; that is simply a regulation? Regulation of the Land Department?

A. Regulation of the Land Department; it is a part of the land department procedure.

Q. Is there any statute making this particular regulation law or giving them force of law; that is, any decision of any Court on them?



A. No; I think not.

29 Q. Some of the regulations, of course, have force of law?

A. Yes, sir; they have force of law.

Q. Others do not—now then, what would you call the receipt issued in this case?

A. In the Stockley case?

Q. Yes.

A. I would call that receipt for the payment of the money.

Q. It is receipt for the payment of all the money that the homesteader is required to pay, is it not?

A. Yes, sir; it was a receipt showing that the entryman had paid all the money that he was required to pay; but a certain amount of that would be commissions as testimony fees which were held suspended.

Q. Held in suspended fees account?

A. In his unofficial account.

Q. But there is nothing more that the entryman had to pay?

A. Nothing more that he had to pay; no, sir.

Q. Now then, was that issued on form that was at one time recognized by the land department?

A. The form that was issued to Stockley?

Q. Yes.

A. Yes, sir; that was the regular receipt form that was adopted after the new regulations went into effect, July 1, 1908. After these regulations went into effect that was the only one form of receipt to be issued.

Q. Well now, would the Register and Receiver proceed with the examination of the final proof unless the entryman had deposited the money with the Receiver?

A. No, sir; he could not, until he received the fees.

Q. He could not?

A. No, sir.

Q. Was the entryman required to pay all the money that he would have to pay, and then, under the regulations of the land department, the Receiver would be required to give him a memorandum of some kind if he insisted upon it?

A. Well, whether he insisted or not.

Q. That was considered part of the receipt?

30 A. No, sir.

Q. Although he had paid all that he was required to pay?

A. That was simply receipt for money received; no matter whether it was for entry or sale of plats or anything.

By Mr. Herold:

Q. That was the only form of receipt then in use governing all cases, was it?

A. Yes, sir; subsequent to July 1, 1908.

Evidence closed.

I hereby certify that the above and foregoing fifteen pages contain a full, true and correct transcript of the evidence offered and adduced at the trial of the Pleas set up in defendants' answer in above case; said hearing having been held before Judge Rufus E. Foster, at Shreveport, Louisiana, on March 1, 1918—as the same appears from my stenographic notes taken at said hearing.

Shreveport, La., March 2, 1918.

J. D. McCINN,  
Stenographer.

Indorsed. Filed Mar. 2, 1918.

31

Western District of Louisiana.

United States of America,

vs. No. 1166 In Equity.

Thomas J. Stockley, Et Als.

This is a bill by the United States against various parties alleged to have unlawfully entered upon and taken possession of a certain parcel of land belonging to the United States, for the purpose of drilling thereon for oil and gas. The bill prays for a decree quieting the title of the Government and for an accounting of the oil removed. The answer admits that the land was public land of the United States but the defendants rely upon a homestead entry made by Stockley and in answer set up a plea in bar.

The facts are these. Stockley made a settlement on the land in question in 1897. On November 13, 1905, he filed his homestead entry. On December 15, 1908, the land was withdrawn from entry by executive order because the Government believed it contained valuable deposits of oil and gas which subsequently proved to be a fact. The withdrawal order excepted valid claim. Stockley had a valid claim to a homestead. He, however, had no claim to any mineral rights. Thereafter, on January 5, 1909, Stockley made his final proof and on January 16, 1909, received a final receipt from the Receiver of the Local Land Office. In making his final proof he filed the usual non-mineral affidavit. On March 17, 1910, Stockley leased the land to the Gulf Refining Company and they have driven three wells and have taken large quantities of oil from the land. On July 2, 1910, the withdrawal order was elaborated and reissued. On February 27, 1912, more than two years after Stockley received his receipt from the Re-

ceiver, a contest of his entry was ordered by the Commissioner of the General Land Office. This contest was dismissed by the Register and Receiver, both concurring and no appeal was taken. Thereafter this decision was reversed by the Commissioner of the General Land Office and on appeal by Stockley to the Secretary of the Interior, the Commissioner was affirmed. No patent ever issued.

It is contended by defendant that under the provisions of Section 7 of the Act of March 3, 1891, after two years from the date of Stockley's receipt from the Receiver, he was vested with the full equitable title and the Commissioner of the General Land Office and the Secretary of the Interior were without jurisdiction and authority to entertain a contest or deny him a patent. They rely on the decision in *Lane vs. Hogland*, 244 U. S. 174. It seems to me, however, that the facts in the *Hogland* case are easily distinguishable from the case at bar. In the *Hogland* case there was no question as to the character of the land. The land had been withdrawn for the purpose of making a forest reserve and *Hogland* undoubtedly had the equitable title, perfected by the proscription of the Statute. In this case, but for Stockley's non-mineral affidavit his final proof would not have been entertained at all. The land is exceedingly valuable for its oil and had been withdrawn from entry for that reason. I do not think Stockley had a complete equitable title without which the plea in bar can not be sustained. It is to be noted Stockley was tendered a surface patent which he declined. Under the withdrawal orders that was all he was entitled to. The plea in bar will be overruled and the case will go to the Master to be proceeded with in the usual course.

Nov. 7/18.

RUFUS E. FOSTER, Judge.

Indorsed: Opinion of Court Overruling Plea in Bar.  
Filed Nov. 8, 1918.

---

33 United States District Court, Western District  
of Louisiana.

United States of America,

vs. No. 1166 In Equity.

Thomas J. Stockley, Et Als.

This cause came on to be heard on the Plea in Bar set up in the Answer of the defendants, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, namely:

That the said Plea in Bar be and the same is hereby overruled, for the reasons set forth in written Opinion now on file.

And the said cause now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

Thus done and signed this 11th day of November, A. D. 1918.

RUFUS E. FOSTER, Judge.

Indorsed: Order Overruling Plea in Bar, and Appointing E. H. Randolph, Esq., Special Master. Filed Nov. 12, 1918.

---

34 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1166 In Equity.

Thomas J. Stockley, Et Al.

Proceedings before Master in Chancery.

On Trial of Merits.

Robert A. Hunter, Special Assistant Attorney General, for the United States.

Thigpen & Herold, Attorneys for Defendants.

The following offerings are made on behalf of Plaintiff:

1. All the evidence, both oral and documentary, introduced by plaintiff on the trial of the pleas in bar set up in the answer of defendants, heard before the Honorable Rufus E. Foster, Judge, on March 1, 1918, said documents and testimony being listed in and shown by the stenographer's note of evidence, and being now on file in this cause.

2. Bulletin issued by the Government Printing Office in 1910, numbered 429, and entitled: Oil and Gas in Louisiana with a Brief Summary of their Occurrence in other States.

Said Bulletin was offered on behalf of the Government in the contest proceedings in the matter of the homestead entry of Thomas J. Stockley, and as shown by the record of said proceedings heretofore offered, was made a part of the said record by agreement of the attorneys then representing the Government and said Stockley, market Plaintiff M.

3. Certified copy of Withdrawal Order of December 15, 1908. Marked Plaintiff N.

4. Certified copy of Withdrawal Order of July 2, 1910. Marked Plaintiff O.

5. Certified copy of telegram from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, Louisiana, dated December 15, 1908. Marked Plaintiff P.

35 6. Certified copy of letter from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, Louisiana, dated December 15, 1908. Marked Plaintiff Q.

7. Certified copy of letter, dated July 16, 1910, from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Marked Plaintiff R.

8. Certified copies of letters marked "Plaintiff F-1, 2, 3, and 5" in the suit of United States vs. Sam W. Mason, et al, No. 1172 on the docket of this Court. Said letters to be marked Plaintiff S, 1, 2, 3, 4, and 5, in this cause.

9. Certified copies of letters and documents marked "Plaintiff G, H, I, J and K" in the suit of United

States vs. Sam W. Mason et al No. 1172 on the docket of this Court. Said letters and documents to be marked "Plaintiff U 1, 2, 3, 4 and 5, respectively, in the record of this cause.

10. Certified copy of plat showing petroleum withdrawals. Marked Plaintiff V.

11. Certified copy of the decision of the Department of the Interior in the matter of the Homestead entry of John T. Bowman. Marked Plaintiff W.

12. Certified copies of the decisions of the Commissioner of the General Land Office and the Secretary of the Interior, in the matter of the homestead entry of William J. Alborty. Marked Plaintiff Y and Plaintiff X.

13. Map showing petroleum withdrawals outstanding September 30, 1916. Marked Plaintiff Z.

14. Extract copy of the Tract Books of the General Land Office, relative to Section 5, Township 20 N. R. 16 W. Marked Plaintiff AA.

15. Certified copy of letter of December 15, 1908, from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, Louisiana. Marked Plaintiff BB.

16. Certified copy of telegram from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, Louisiana, dated December 15, 1908. Marked Plaintiff CC.

Offerings listed under numbers 5 to 16, inclusive, are offered by reference to the case of the  
 36 United States vs. Sam W. Mason et al No. 1172, on the docket of this Court, it being



agreed by counsel that the Court may examine the record in said cause with respect to said offerings, and same are incorporated in this record by reference. Certified copies of said offerings will be furnished to the Clerk by plaintiff for use in the preparation of the transcript of appeal, and it is agreed that plaintiff may furnish such copies for such use.

17. Letter from the Commissioner of the General Land Office to Arthur D. Kidder, Supervisor of Surveys, dated September 27, 1913, with the privilege of substituting a certified copy to be marked Plaintiff DD.

18. Letter from the Commissioner of the General Land Office to Arthur D. Kidder, Supervisor of Surveys, dated December 1, 1916, with the privilege of substituting a certified copy to be marked Plaintiff EE.

19. Plat of survey made by Arthur D. Kidder, Supervisor of Surveys, approved by the Commissioner of the General Land Office March 28, 1917, being supplemental plat of T. 20 North Range 16 West, with the privilege of substituting a certified copy, to be marked Plaintiff FF.

20. Supplemental topographic map of survey made by Arthur D. Kidder, Supervisor of Surveys, of T. 20 North Range 16 West, approved by the Commissioner of the General Land Office March 28, 1917, with the privilege of substituting a certified copy to be marked Plaintiff HH.

21. Statement prepared by James W. Neal, Special Agent of the General Land Office, showing dates of commencement of wells drilled on the land in controversy by the defendant, Gulf Refining Company of

Louisiana, and the quantity and value of the oil, as well as the names and amounts paid to or held for the account of royalty claimants of the said Company. Marked Plaintiff II.

It is agreed that the said statement is true and correct. It is further agreed that the Gulf Refining Company of Louisiana drilled the said wells at the dates mentioned, on the land in controversy, and produced and removed therefrom oil of the quantity and value shown by said statement.

37 Offer printed pamphlet containing Rules of Practice in cases before the United States District Land Office, the General Land Office and the Department of the Interior, approved December 9, 1910. Marked Plaintiff Exhibit JJ.

Counsel for Defendants object to each and all of said offerings which do not constitute an essential part of the proceedings in the homestead entry of Thomas J. Stockley, Baton Rouge 03472, or part of the proceedings in which the order of the Commissioner of the General Land Office and Secretary of the Interior claimed by Defendants to be null and void, on the ground that the same are immaterial and irrelevant to the issues.

This general objection being made by agreement to avoid the necessity of special objection in case of each offering.

The objection is overruled on the ground that it goes to the effect of the testimony and will be considered in connection herewith.

Referring to the agreement in plaintiff's note of offerings as to documents offered in the Mason case these agreements are made in open Court subject to the objection above noted.

It is admitted that the statement of James W. Neal, marked Plaintiff II, is a correct statement of the number

of barrels of oil produced from the property, the market value of the oil so produced and of the distribution of the oil or its proceeds between the Gulf Refining Company of Louisiana and the various claimants in royalty interest in said land.

With reference to the statement Pipage earnings \$7,-625.50 appearing on said statement Plaintiff II it is agreed that for the understanding and meaning of this term and its effect reference may be made to the testimony in the Mason case above referred to under a like agreement, that in making up transcript for appeal such testimony may be copied from the Mason case into the transcript of appeal in this case.

Counsel for Defendants offer in evidence certified copy of Final Receipt of date January 16, 1909, in matter of homestead entry of Thomas J. Stockley, said receipt signed by C. J. Green, Receiver of Public Monies and being numbered 60769, heretofore offered in evidence as Defendant No. 4 on trial of plea involved.

Evidence closed.

We hereby certify that the above contains a correct translation of my stenographic notes taken on the trial of the above styled and numbered cause.

R. B. COOK & CO.,  
By MRS. C. B. FLEMING,  
Stenographer.

Indorsed: Filed Apr. 7, 1919.

39 1166—U. S. vs. T. J. Stockley et al. Plaintiff N.  
(2).

"R" 4-207

CRGO                      Department of the Interior,  
                                 General Land Office,  
                                 Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) D. K. PARROTT,  
Acting Assistant Commissioner  
of the General Land Office.  
File.

Department of the Interior,  
General Land Office,  
Washington, D. C.

December 15, 1908.

Address only the Commissioner of the General Land Office.

See, also, 1910-44655.  
Register and Receiver,  
Natchitoches,  
Louisiana.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended

the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

40

Respectfully,  
FRED DENNETT,  
Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,  
Secretary.

Indorsed:—Filed in Evidence Apr. 7, 1919.

41

DMG—"FS" Department of the Interior,  
General Land Office,

Washington, D. C. November 24, 1917.

CRGO.

I hereby certify that the annexed copy of telegram dated December 15, 1908, is a true and literal exemplification from the copy of said telegram on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

D. K. PARNOT,  
Acting Assistant Commissioner  
of the General Land Office.

DMG—3C

"A"  
ECF  
ECF

Department of the Interior,  
General Land Office,

Washington, D. C. December 15, 1908.

Telegram (Copy).

Register and Receiver,  
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three north,  
inclusive, of ranges ten to sixteen west, inclusive, Louisi-  
ana Meridian, withdrawn this date by Secretary from all  
settlement, entry, and appropriation.

DENNETT,  
Commissioner.

RPF.

Official Business, Government Rate.

Filed Apr. 7, 1919, W. B. Lee, Clerk.

42

4-207.

DMG—"FS"

"B"  
Department of the Interior,  
General Land Office.

CRGO Washington, D. C., November 24, 1917.

I hereby certify that the annexed copy of letter dated  
December 15, 1908, is a true and literal exemplification  
from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,

Acting Assistant Commissioner  
of the General Land Office

"A"

ECF

Department of the Interior,  
General Land Office.

Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land  
Office.

Register and Receiver,  
Natchitoches, Louisiana.

Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the secretary, from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 west, inclusive, Louisiana Meridian. Make proper notations upon your records.

No rights whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal; and any applications, selections, or entries based thereupon must be rejected by you subject to appeal.

43 Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries

and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very respectfully,  
**FRED DENNETT,**  
 Commissioner.

RPF

Indorsed:—Filed Mar. 1, 1918. Filed Apr. 7, 1919.

44 No. 1166

P—1 (a).

4-062.

A. 11

0188 E-99.

### Non-Mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,  
 United States Land Office.

Natchitoches, La., January 16, 1909.

Thomas J. Stockley, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for government title to the frl SW $\frac{1}{4}$  NE $\frac{1}{4}$  & frl. SE $\frac{1}{4}$  Sec. 5 and frl. NW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 8 T 20 N—R 16 W La. Mer; that he is well acquainted with the character of said described land, and with each



and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, cinnebar, lead, tin or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is worked for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post office address is Lewis, La.

THOMAS J. STOCKLY.

I hereby certify that the foregoing affidavit was read and contrary to such oath states and subscribes any material to affiant in my presence before he signed his  
 45 name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Natchitoches, La., within the Natchitoches, La. land district, on this 16 day of January, 1909.

J. ERNEST BREDÁ,  
 Register.

**Note.**—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—  
Crimes.— Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any Court of the United States until such time as the judgment against him is reversed. (See Sec. 1750).

4-348 b.

A 12

For use in Homestead, Desert Land, and Timber or Stone  
Entries.

Notice for Publication.  
(Publisher.)

E-100  
0188.

Department of the Interior,

U. S. Land Office at Natchitoches, La.

Nov. 20, 1908.

Notice is hereby given that Thomas J. Stockley, of  
Lewis, La., who, on Nov. 13, 1905, made Homestead Entry

No. 10817, No. 0188, for Frl. SW $\frac{1}{4}$  NE $\frac{1}{4}$  FRL. SE $\frac{1}{4}$  Sec. 5 and Frl. NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 8, Township 20 N., Range 16 W., La. Meridian, has filed notice of intention to make final Five Year Proof, to establish claim to the land above described, before F. A. Leonard, Clk. Dist. Court, at Shreveport, La., on the 5th day of January, 1909.

Claimant names as witnesses:

- 46      G. Allen, of Smithland, Tex.  
           T. Allen, of Surry, La.  
           G Vaughn, of Surry, La.  
           L. Gray, of Smithland, Tex.

J. ERNEST BREDÁ,  
 Register.

Caucasion,  
 Shreveport.

\*\* Publisher: Return this form to the Register at the end of the period of publication, with the "Affidavit of Publication".

#### Notice for Publication.

Department of the Interior, United States Land Office at Natchitoches, La., Nov. 20, 1908. Notice is hereby given that Thomas J. Stockley, of Lewis, La., who on November 13, 1905, made Homestead Entry No. 10817, No. 0188, for fractional southwest quarter of northeast quarter and fractional southeast quarter section 5, and fractional northwest quarter of northeast quarter section 8, township 20 north, range 16 west, Louisiana Meridian, has filed notice of intention to make final five year proof, to establish claim to the land above described, before F. A. Leonard, clerk of the District Court, at Shreveport, La., on the 5th day of January, 1909. Claimant names as witnesses: G. Allen of Smithland, Texas; T. Allen of

Surry, La., G. Vaughn, of Surry, La.; L. Gray of Smithland, Texas.

J. ERNEST BREDÁ,  
Register.

Caucasion, Shreveport, La.

11-22

**Affidavit of Publication.**

I, V. Grosjean, Publisher of the Caucasian, published weekly at Shreveport La., do solemnly swear that a copy of the above notice as per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof, for 6 consecutive weeks, commencing with the issue dated Nov. 22nd 1908 and ending with the issue dated Jany. 3rd, 1909

V. GROSJEAN.

Sworn before me this 5<sup>th</sup> day of January, 1909.

F. A. LEONARD,  
Clerk 1st Dist. Court Louisiana.

P—1 (a)  
B

47 Deft. 4.

1166. E-1

Filed Mar. 1, 1918.  
4-207.

759599 Department of the Interior.  
"B" General Land Office.  
CRGO Washington, D. C., February 8, 1918.

I hereby certify that the annexed copy of receipt No. 60769 is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) C. M. BRUCE,  
Assistant Commissioner of the  
General Land Office.

4-181.

759599-1

CJG

Department of the Interior,  
General Land Office.

No. 60769

Receipt.

Use Copying Ink only on this Receipt.

U. S. Land Office,

January 16th, 1909.

Received of Thomas J. Stockley Lewis, Caddo Parish,  
(Name) (Address)

Louisiana, the sum of Three Dollars and One Cents, in connection with Hd. Final, Serial No. 0188, for: (HE No. 10817) Frl. SW $\frac{1}{4}$  NE $\frac{1}{4}$  and Frl. Sec. 15 and Frl NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 8, Township 20 North, Range 16 West, Louisiana Meridian, 71.25 acres, at \$1.25 per acre \$ ...

Fees .....

Commissions . . . . . 1.76

Testimony Fees 835 words at 15 cts. per 100 words 1.25

Contest Fees .... words .. cts per 100 words : ....

Transcript of Records words .. cts. per 100 words ....

Total . . . . . \$3.01

Less Com's Suspended in unofficial mys ..... 1.76

Total Fees accounted for ..... \$1.25

C. J. GREENE,

Register of Public Money.

*Receiv*

48                      1166 U. S. vs. T. J. Stockley et al. Plaintiff. 3.  
 "B"                      4-207.

CRGO                      Department of the Interior,  
                                  General Land Office.  
                                  Washington, D. C., November 8, 1917.

I hereby certify that the annexed copy of order of withdrawal, Petroleum Reserve No. 4, approved July 2, 1910, is a true and literal exemplification from the original order on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)                      D. K. PARROTT,  
                                  Acting Assistant Commissioner  
                                  of the General Land Office.  
 (Stamped)

54239  
 July 9, 1910.  
 ECF  
 dmj — 1 fs

Department of the Interior,  
 United States Geological Survey.  
 Washington.

July 1, 1910.

Office of the Director.  
 The Honorable,

The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation af-

fecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

(Stamp)

Received July 9, 1910.

G. L. O.

# ORDER OF WITHDRAWAL.

Petroleum Reserve No. 4.

Petroleum Reserve No. 4, p. 2.

dmg—2 fs.

It is hereby ordered that that certain order of withdrawal heretofore made on December 15, 1908, insofar as the same includes any of the lands hereinafter described, be, and the same is hereby ratified,

confirmed, and continued in full force and effect; and subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases", approved June 23, 1910, there is hereby withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to-wit:

## Louisiana Principal Meridian, Louisiana.

- T. 17 N., R. 10 W., all of township.
- T. 18 N., R. 10 W., all of township.
- T. 18 N., Rs. 14 to 16 W.
- T. 19 N., Rs. 14 to 16 W.
- T. 20, N., Rs. 14 to 16 W.
- T. 21 N., Rs. 14 to 16 W.
- T. 22 N., R. 15 W., all of township.
- T. 22 N., R. 16 W., all of township.
- T. 23 N., R. 15W., all of township.
- T. 23, N., R. 16 W., all of township.

Respectfully,

GEO. OTIS SMITH,  
Director.

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER,  
Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT,  
President.

Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,  
Acting Secretary.  
DMC

50

Indorsed:—Filed in Evidence Apr. 7, 1919.



51

1 x C. F. D.

ACB

Department of the Interior.  
General Land Office,  
Washington.

February 27, 1912.

Address only the  
Commissioner of the  
General Land Office.

Action under the circular  
of January 19, 1911.

Register and Receiver,  
Baton Rouge, Louisiana.

Gentlemen:

November 6, 1905, Thomas J. Stockley made H. E. No. 10817, Natchitoches series, now No. 03472, your land district, for Fractional SW $\frac{1}{4}$  NE $\frac{1}{4}$  and Fractional SE $\frac{1}{4}$  of Sec. 5, and Fractional NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec. 8, T. 20 N., R. 16 W., L. M., containing 71.25 acres, submitted final proof January 5, 1909, and certificate was withheld on account of oil withdrawal.

Said land was withdrawn by the Secretary December 15, 1908, on account of oil, and included in Petroleum Reserve No. 4 by Executive order of July 2, 1910. No other withdrawals.

February 10, 1912, a special agent of this office submitted an adverse report upon the above entry.

You will, therefore, proceed in this case in accordance with the circular of January 19, 1911, and, in the notice provided for in paragraphs 3, 4 and 5 thereof, you will state that a special agent of this office charges:

1. That said land is mineral in character being chiefly valuable for its deposits of oil and gas.

2. That at and prior to the time of making final proof claimant knew the land was chiefly valuable for its oil and gas, and its comparative location and surface indications were such as to put him on notice as an ordinarily prudent man that the land contained deposits of oil and gas, and was chiefly valuable therefor.

Very respectfully,

FRED DENNETT,  
Commissioner.

Board of Law Review,  
By D. A. MILLRICK.

2-20 ms

52 No. 1166 P 1—(b).

In reply please refer to "P"—Natchitoches 0188—ACB  
WHL

E-92

AGB

9292/A. 4.

4-108.

Department of the Interior.

General Land Office,  
Washington, D. C.

July 16, 1910.

Address only the  
Commissioner of the  
General Land Office.

Final Certificate to Issue.

Register and Receiver,  
Natchitoches, La.

Sir:

In the matter of Homestead Entry, No. 10817 made  
Nov. 6, 1905, by Thomas J. Stockley, for fractional SE¼

and SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 5, and fractional NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 8 Township 20 N., Range 16 W., La. Meridian, your land district, upon which final proof was made Jan. 5, 1909, and certificate withheld, this office has considered the report of a Special Agent of date Jan 26, 1910, wherein he states that claimant established residence on the land long prior to making entry, and has lived on the land continuously ever since, and has cultivated and improved same. The proof appears regular and shows that residence was established in March, 1899. Said land was withdrawn by the Secretary, Dec. 15, 1908, pending investigation as to its character, but the withdrawal was vacated by departmental order of June 4, 1910. No other withdrawals.

The agent's report has been carefully considered, and the case is clear-listed and closed as to the Field Service Division.

You will, upon payment of any further sums that may be due and should no other objection appear, issue final certificate and transmit the same with your regular monthly returns.

Very respectfully,

FRED DENNETT,

Commissioner H

D. A. MILLRICK.

Statement in this letter as to restoration is an error. Land never was restored, but withdrawn for Petroleum Reserve by Executive order of 7/2/10. ACB FS  
WWG.

Copy to CFD.

53

No. 1166

5—(D)

E—138

United States,

vs. Involving title to H. E. No.  
03472, Baton Rouge Land  
District.

Thos. J. Stockley.

## STIPULATION.

It is hereby stipulated and agreed by and between William B. Ellison and Thigpen & Herold, Attorneys, representatives of the Plaintiff and the Defendant, respectively, in the above-entitled cause, that the testimony taken in said case before the Clerk of the District Court at Shreveport, La., December 28 and 30, 1912, may be taken in shorthand and the signatures of the witnesses to the transcript thereof dispensed with, as provided by Rule 39, Rules of Practice, General Land Office.

WILLIAM B. ELLISON,

Attorney for the Government.

THIGPEN &amp; HEROLD,

Attorney for the Defendant.

Dated: Shreveport, La., December 28, 1912.

54

United States,

vs.

Thomas J. Stockley.

Involving title to HE 03472 Baton Rouge, for the frl SW  
1-4 of NE 1-4 and Frl SE 1-4 Sec. 5 and Frl NW 1-4  
of NE 1-4 Section 8 T 20 N R 16 W.

Pursuant to Commission issued by the Register and  
Receiver of the United States Land Office, Baton Rouge,

Louisiana, and due notice given to all parties concerned, testimony was taken in the above entitled cause, before S. N. Kerley, Clerk District Court, Caddo Parish, Louisiana, at his office in Shreveport Louisiana, December 28th, 1912.

William B. Ellison present, representing the Government and J. A. Thigpen of the firm of Thigpen and Herold was present as the Attorney for the defendant, and the defendant was present in person.

W. B. PYRON, witness being called on behalf of the Government after being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Ellison:

Q. Mr. Pyron, what is your official position?

A. Agent for the Gulf Refining Company of Louisiana.

Q. How long have you been connected with the Gulf Refining Company?

A. Since November, 1909.

Q. During that time, have you had to do, extensively with what is known as the Caddo Oil Field?

A. I have.

Q. You may state, in a general way, what your duties are, in connection with your present position?

A. I have charge of the Land Department and in a general way I look after the operations.

Q. Are you acquainted with Thomas J. Stockley, the defendant in this case?

A. I am.

Q. About how long have you know Mr. Stockley?

A. About three years.

Q. Are you acquainted with the character [54½] and location of the land embraced in his Homestead entry?

A. I suppose with reference to Sections Five and Eight, I do not know about his homestead entry I am, I suppose that refers to Sections Five and Eight?

Q. You are acquainted then, with Sections Five and Eight, Township Twenty North, Range Sixteen West?

A. Yes, sir.

Q. What is the character of that land, Mr. Pyron, with reference to its oil or gas possibilities?

A. Well, it has two producing wells on it, one of them about Thirty barrels and the other about six barrels per day.

Q. Who drilled those wells?

A. The Gulf Refining Company of Louisiana.

Q. Is that the company with which you are connected?

A. Yes, sir.

Q. When were those wells drilled?

A. Number One was drilled during the summer of 1910, I think, about August—I do not remember the date it was completed, and Number Two was completed the early part of 1912, it is a small well.

Q. Under what authority did your Company drill these wells?

A. Under a lease from Mr. Stockley.

Q. When was that lease contract made?

A. Either February or March 17th, 1910.

Q. When did your company first enter into negotiations with Mr. Stockley, with a view to securing a lease on his land?

A. Just a few days before we made the contract.

Q. How long before that time, had your Company regarded that land as possibly mineral land?

A. Not very long, about November, 1909, the J. M. Guffy Petroleum Company took up several thousand

acres, or what we term wild cat leases and in one of these leases were under obligations to drill a well, which was on the Burr tract, and when about to complete the Burr well and saw we would get an oil well, then we went to Stockley to make a trade with him.

Q. What did your Company pay Mr. Stockley for his lease?

A. I think, Seven Thousand dollars in round numbers.

Q. For how long a time?

A. I do not remember, there was an obligation to drill a well within a certain number of days, I believe that it was sixty or ninety days, as I remember, was contingent on what the Burr well did, if it produced a certain number of barrels, after it come in, then we would drill a well on this property.

Q. How long was the lease to run?

A. As long as it produced oil in paying quantities?

Q. Do I understand that this lease for which you paid Seven Thousand Dollars is indefinitely based on that consideration?

A. He also receives a portion of the oil, in other words a royalty out of the oil produced. I think an eighth up to Two hundred barrels per day and a sixth over Two hundred. That was a part of the consideration of the lease.

Q. Has any gas been discovered on this land?

A. No, sir.

Q. Are these two wells drilled by your Company, the only wells drilled on the Stockley tract?

A. Yes, sir.

Q. Mr. Pyron, have you with you, the lease which you secured from Mr. Stockley, that is the instrument by which you secured a lease on this property?

A. No, sir, I have not.

Q. Would you be willing to attach it to your depositions, a copy of said lease?

A. Yes, sir, I can get it, get a copy from the Clerk, it is on record here.

Q. Would you be willing to do that?

A. Yes, sir.

Q. Then I will ask you to secure a copy of such lease and attach it to your depositions, to be marked exhibit "A"? Will you do that?

A. Yes, sir.

Q. On January 5th, 1909, did your Company  
56 have any information that would lead you to believe the Stockley tract of land contained oil or gas?

A. We did not.

Q. Was your company then doing business in this field?

A. Yes, sir.

Q. Were they in position to know as such about this land, as other Companies doing business in this field?

A. Yes, sir.

Q. You know whether or not other companies, doing business in this territory, at that time, had any information that would lead them to believe that this land, contained oil or gas, January 5th, 1909?

A. I judge they did not by the fact that none at that time were taking leases over there.

Q. Did any of these companies have leases on any of the land West of Jeems Bayou, within a radius of Two miles of the Stockley tract, on January 5th, 1909?

A. Not to my knowledge.

Q. Mr. Pyron, I now show you a plat or blue print of the Caddo Oil Field, marked "Caddo Oil Field. Gulf Refining Company of Louisiana, Shreveport, November, 1912. F. E. Chalt, Engineer" which purports to show the oil



and gas development in a large part of the Caddo Oil field? Was this blue print prepared by your Company?

A. It was.

Q. It was prepared from official records of your Company?

A. Yes, sir.

Q. Does it correctly show the developments up there, up to November, 1912?

A. It is approximately correct, with the exception of a few holes or wells on the out skirts of the field.

Q. Are you willing to attach this blue print to your depositions to be made a part thereof?

A. Yes, sir.

The representative of the Government offers in evidence the blue print referred to and asks that same be marked exhibit "B."

57 Mr. Pyron, this blue print shows that a great many wells had been drilled West of Jeems Bayou and North of the Stockley tract of land? Were any of those wells drilled prior to January 5th, 1909?

A. No, sir.

Q. This blue print, also shows numerous wells drilled West of Oil City, and between Jeems Bayou and the Kansas City Southern Railroad, was the territory just described proven oil territory January 5th, 1909?

A. Not all of it. There were a few very little wells, just west of Oil City, and the nearest well to the property referred to was in the South side of Section Three, Township Twenty North, Range Sixteen West, a dry hole, drilled by the Atlanta Oil and Gas Company.

Q. Mr. Pyron, has your Company done considerable prospecting in that immediate territory?

A. They have, since about March, 1910. They have done quite a bit of developing.

Q. Do you find the same geological formations in the territory between Oil City and Jeems Bayou, that you find on the Stockley tract?

A. Entirely different.

Q. Will you kindly indicate what that difference is?

A. Well, I find a different character of sand and a different grade of oil, at approximately the same depth. No regularity in the sand at all, in either place, as far as that is concerned.

Q. Do I understand you to say then, that the difference in the geological formation, is not a difference in the depth of the oil bearing sand, but a difference in the character of sand?

A. No, sir, a difference in the character of the sand and grade of the oil. In the Oil City district they get a heavy black oil, and the Bayou districts they get a light brown oil.

Q. Which is the more valuable?

A. The brown oil.

Q. That is the oil found on the Stockley tract?

A. Yes, sir.

58 Q. I understand you to say that you strike the oil bearing sand on the Stockley tract, about the same depth, that you find them in the Oil City territory?

A. Approximately the same, vary from ten to forty feet.

Q. Would, or would not that indicate then that the oil bearing stratum, that runs through this Oil City region, extends across Jeems Bayou, and under the Stockley tract?

A. No, sir, I do not think it has anything to do with it, has no connection with the heavy oil.

Q. Would, or would not the discovery of this oil bearing sand in the territory between Oil City and Jeems Bayou, lead practical oil men to believe that the same

strata was continued across Jeems Bayou, and under the Stockley tract?

A. No, sir, be no special reason for thinking so.

Q. Mr. Pyron, I will ask you to explain by what facts Oil Companies are governed in prospecting on land?

A. You have asked me a hard one. About nine times out of ten they just guess, to use slap language, take a pot shot at it. I might say that they watch developments and sometimes get some idea of the trend of the stratas of oil. For instance in the Caddo field the light oil was developed down at Mooringsport, then a few wells in Section eighteen, and they gradually worked ahead until the finally found the light oil run at a North East and North West course.

Q. Mr. Pyron, how far from the Stockley tract of land, was the nearest oil well, or gas well discovered, on January 5, 1909?

A. I do not know exactly, but about three miles east of it?

Q. Mr. Pyron, did I understand you to say there had been no discoveries at all, west of Jeems Bayou prior to January 5th, 1909?

A. No, sir.

Q. Mr. Pyron, are you familiar with Bulletin No. 429, issued by the Geological Survey, by the Government?

A. Yes, sir, I am, I have read it practically all of it.

Q. Is the data given in that Bulletin, with reference to the dates and depths of the wells drilled in this vicinity correct?

59 A. They are approximately correct, in fact give you a better idea than you can probably get from any one man in the field, it is fairly accurate, that is I have found it so, especially as to dates.

Q. Have you a copy of that Bulletin?

A. I have not.

It is hereby agreed between counsel representing the General Land Office, the Counsel representing the defendant, that the Bulletin, just referred to, may be referred to by the Land Office Officials, if desired, for the purpose of verifying the testimony of the witnesses and determining the issues involved in this case.

Q. Mr. Pyron, what are the surface indications on the Stockley tract?

A. I do not know that there are any.

Q. What are the surface indications, with reference to oil and gas?

A. I do not know that there is anything about the surface, that would indicate there is either.

Q. What in general is the topography of the Stockley tract?

A. Well, it is kind of hill land, on the edge of the Bayou, sandy soil, part of it and has some oak timber on it and a little pine timber.

On Cross Examination, he said:

Q. Mr. Pyron, you know when were the first developments amounting to anything, west of Jeems Bayou, any part of Jeems Bayou?

A. The drilling of the Trees Oil Company No. 4, which was completed about November 10th, 1909.

Q. What was the location of that well?

A. Section Twenty-seven, Township Twenty-One North, Range Sixteen West.

Q. The Trees Company then held under lease, a large block of territory surrounding the well?

60 A. Yes, sir.

Q. Which was subsequently sold to the Standard Oil Company?

A. Yes, sir.

Q. You know, whether, immediately prior to the Styles No. 4 coming in, the Tress Company offered to sell its holdings to the Gulf Refining Company of Louisiana?

A. They did. They made a proposition, I think of a price of something less than their expenditures in the filed [field]?

Q. In other words, the Tress Company, in order to get out of any loss, offered to sell out their entire holdings, for less than it cost them?

A. Yes, sir.

Q. Was the proposition accepted?

A. No, sir, it was turned down.

Q. For what reason?

A. At that time we did not think it was worth the price.

Q. Your Company did not think the entire holdings of the Tress Company, consisting of four or five thousand acres of land west of Jeems Bayou, was worth what it actually invested in it, in the way of developing?

A. No, sir, we did not.

Q. This land was North of the Stockley land?

A. Yes, sir.

Q. In Sections Thirty-Two, Thirty-Three, Twenty-Nine, Twenty-eight, Twenty-Seven, Twenty-two, Twenty-one, Twenty, sixteen and seventeen being practically all of Township Twenty-One North Sixteen West, lying West of Jeems Bayou?

A. Yes, sir.

Q. That land subsequently proved to be very productive territory?

A. Yes, sir.

Q. Has the Stockley land, ever been very productive?

A. No, sir, not but two very little wells on it.

Q. Very small wells?

A. Yes, sir.

61 Q. In April 1910, the Gulf Refining Company of Louisiana, took a lease from the Caddo Levee Board of one hundred and forty acres adjoining the Stockley land?

A. Yes, sir.

Q. Is that a paying lease?

A. No, sir, it is not.

Q. Mr. Pyron, the Gulf Refining Company in March, 1910, took a lease from the heirs of Rives on the North half of North East quarter of Section Five, immediately North of the Stockley land?

A. Yes, sir.

Q. Have there been any wells of any consequence on that land?

A. We drilled three wells, two very small wells, never produced in paying quantities and the third was a dry hole.

Q. You recollect that in the spring of 1909, this Rives land was offered to the Gulf Refining Company of Louisiana, at a nominal price?

A. I was not here in 1909.

Q. Has the production on the Stockley land, the Rives land or the Levy Board land, been such as to warrant any further expenditure of money?

A. No, sir, not on either of these leases.

Q. Have the developments on the three leases been such as to sustain a gain or loss?

A. Loss.

Q. Heavy loss?

A. Yes, sir, very heavy loss on the three of them.

Q. Mr. Pyron, you are familiar with the tract known as the Potter point?

A. Yes, sir.

Q. How does it lay as relates to the Stockley land?

A. It adjoins it on the West.

Q. Who owns it?

A. The J. M. Guffy Petroleum Company.

Q. You know about when it was purchased?

A. About August, 1905.

62 Q. You know whether it was purchased in fee or how?

A. Purchased in fee at about a dollar and a half an acre.

Q. That purchase you think was in 1905?

A. Yes, sir, 1905 or 1906, I think it was in 1905.

Q. Was that at that time, regarded as possible oil or gas land?

A. I would not think so.

Q. Would not the price indicate, it could not have been considered oil or gas land at that time?

A. Yes, sir.

Q. On January 5th, 1909, and prior thereto, were there any indications of oil or gas on the Stockley land, such as to put an ordinary prudent person on notice, that that land was more valuable for oil or gas, than for any other purpose?

A. No, sir.

Q. Would you consider it now as valuable for oil or gas land?

A. Would not consider it very valuable.

Q. I believe that you stated that developments already taken and the production from the wells, was not such as to warrant any further developments?

A. No, sir, would not warrant any further drilling.

Q. And as a matter of fact has been a heavy loss?

A. Yes, sir, and there was a dry hole drilled just opposite the South end of the land, within the last six months.

On re-direct examination, he said:

Q. Mr. Pyron, are the wells that your Company drilled on the Stockley tract paying wells?

A. Well, one just a little more than pays the actual operating expenses. What I mean to say is that it was operated at a loss is that we have never regained any of the money expended for drilling the well and operating the well, and the second one referred to is a six barrel well, not even paying operating expenses.

Q. How long have those wells been in operation?

A. No. 1 was completed in the Summer of 1910, and No. 2 in the early part of 1912.

Q. Does your Company intend to continue to  
63 operate those wells?

A. They probably will for sometime, that is No. 1. I do not know about the small one.

Q. Would you continue to operate them, if you thought, in the end they would produce a net loss to the Company?

A. So long as we have sustained our loss, for the amount paid for the lease and drilling, so long as we can produce enough oil to pay actual expenses, at the present time No. 1, and a few dollars over, that cuts down the total loss that much, but when it comes to the point, where the production will not pay the operating expenses, then of course they will be abandoned.

L. B. WEBSTER, witness being called on behalf of the Government, after being first duly sworn, testified as follows:

On Direct Examination, he said:

By Mr. Ellison:

Q. Mr. Webster, what is your official position?

A. Lease man for the Gulf Refining Company of Louisiana.

Q. How long have you been operating in the Caddo field?

A. About five years.



Q. During that time, have you been intimately acquainted with the oil and gas developments in this field?

A. Yes, sir.

Q. Do you know Mr. Thomas J. Stockley?

A. Yes, sir.

Q. How long have you known him?

A. About thirty-five years.

Q. Are you acquainted with the land embraced in his Homestead Entry?

A. Yes, sir.

Q. At issue in this contest?

A. Yes, sir.

Q. What have you to say as to the oil or gas character of that land?

A. We have two small wells on the tract.

64 Q. Did your Company negotiate a lease with Mr. Stockley for this land?

A. Yes, sir.

Q. Did you secure the lease?

A. No, sir, Mr. Fisher made that lease, or it was made in the office here, I do not remember which.

Q. You say you all have two small wells on this land, when was the first well completed?

A. I could not give the date, the trade was made shortly after the Burr well came in, in March, 1910, and I think it was a short drilling contract.

Q. In November, 1905, had there been any developments in the Caddo field, that would indicate oil or gas might be discovered on this Stockley tract?

A. No, sir.

Q. Had there been any developments in January, 1909, to indicate anything of the kind?

A. No, sir. The wells drilled in west of Oil City some produced and some were dry holes, but I cannot recall which were producers and which were dry.

Q. How far from this tract, was the nearest oil or gas well in January, or on January 5th, 1909?

A. I would roughly guess about three miles.

Q. Which direction from the land?

A. East.

Q. Had there been any discovery, within two miles of this tract of land, on January 5th, 1909?

A. I think not.

Q. Had there been any discovery of oil or gas West of Jeems Bayou before January 5th, 1909?

A. I cannot recall the date of the first well, that the Tress people drilled, that was the first well West of the Bayou, but I do not remember the date. That is considerable to the North and East.

Q. When did your Company first lease any  
65 land West of Jeems Bayou, and within say two miles of the Stockley tract?

A. I think the Burr lease was the first lease West of the Bayou.

Q. When was that lease?

A. I could not give you the date of that lease, but it was right after the Tress well come in.

Q. Subsequent to January 5th, 1909?

A. Yes, sir, I think so, subsequent to the drilling of the Trees Well.

Q. Mr. Webster, did you hear Mr. W. B. Pyron's testimony in this case this morning?

A. Yes, sir.

Q. What have you to say about his testimony, with reference to the Stockley tract?

A. I think it is in line, and can be borne out by the facts.

Q. Do you agree with him, that there was nothing to indicate on January 5th, 1909, that the Stockley tract was underlain with oil or gas?

A. No, sir, nothing to indicate, no drilling in that territory and that is the only true test.

Q. Do you mean to express the opinion, that there is nothing in the topographical conditions or in the geological formations, to enable prospectors to locate oil on land?

A. I would not pay any attention to the topography to amount to anything, and as far as geological conditions, I think there is something in that.

Q. What is the only test as to the oil or gas character of land?

A. A drill.

On Cross Examination, he said:

Q. Mr. Webster, you know the Rives land the North half of North East quarter of Section Five, Township Twenty, North, Range Sixteen West?

A. Yes, sir.

66 Q. North of Stockley's land?

A. Yes, sir.

Q. Do you recall that that land was offered to the Gulf Refining Company of Louisiana in the early part of 1909?

A. Yes, sir.

Q. At what price?

A. One dollar an acre, not over that.

Q. Was it accepted or refused?

A. Refused.

Q. For what reason.

A. The Company did not have any faith in it.

Q. Did not think there was any oil over in that territory?

A. No, sir.

At this point, owing to the absence of witnesses, the Government suspends, and gives notes to the opposing

Counsel and defendant that they will offer further testimony in this case on December 30th, 1912.

### DEFENDANT'S EVIDENCE.

W. W. BELL, witness for defendant, being first duly sworn, testified as follows:

On Direct Examination, he said:

Q. Mr. Bell, where do you live?

A. Beaumont, Texas.

Q. What is your business?

A. Oil business.

Q. You are not in the employ of any corporation?

A. Well I might say this, I have organized a little company known as the Eagle Petroleum Company of Louisiana, with its domicile at Lake Charles, and I am President and General Manager of that corporation.

Q. You have been in the oil business a number of years?

A. Yes, sir.

Q. For how long?

67 A. Since Spindle top come in, in January, 1901, I believe it was.

Q. Have you been continuously in the oil business since then?

A. Well, I have been in the oil country and in the business most of the time.

Q. Were you ever in the employ of the J. M. Guffy Petroleum Company and the Gulf Refining Company?

A. Yes, sir.

Q. In what years?

A. From about 1904, up to a year ago, or a little more than a year ago.

Q. Are you familiar with the land known as the Potter's point?

A. Yes, sir.

Q. In Texas.

A. Yes, sir.

Q. That adjoins the Stockley land?

A. Yes, sir.

Q. Did you negotiate the purchase of that land?

A. Yes, sir.

Q. In what year?

A. I believe it was in 1905, I do not remember the date exactly.

Q. Approximately how many acres was in that tract?

A. About three thousand I think, the survey showed Twenty-eight hundred and some odd acres, but it was supposed to be about Three thousand acres.

Q. What did you pay for the three thousand acres?

A. Three thousand dollars cash and Three hundred dollars commission, ten per cent commission.

Q. About one dollar an acre?

A. Yes, sir, a fraction over one dollar an acre.

Q. About one dollar and ten cents an acre.

A. Yes, sir, about that.

Q. At that time was Mr. Thomas J. Stockley living on the land that he afterwards Homesteaded?

A. Yes, sir, he was?

Q. Was he cultivating it?

A. Part of it.

68 Q. Had a farm there?

A. Yes, sir.

Q. When did you first meet Mr. Stockley?

A. Well, about the time I made that purchase, sometime in 1905, I do not remember just exactly what time of the year it was.

Q. Did Mr. Stockley consult you at that time about some way of getting a piece of land?

A. I had occasion to stop at Mr. Stockley's house on two or three occasions, he had a small skiff there and I

was on the West side of the lake and wanted to get on the East side so that I could go to the Kansas City Southern railroad at Caddo City and take the train to Shreveport, and I went to his house and got him or someone at the house to put me across the lake. I had occasion to go there afterwards, I think that I slept there one night.

Q. Did Mr. Stockley consult you at the time with reference to the matter of perfecting title to the land?

A. Yes, sir, in the general conversation I asked if he owned that land, and he said he did not, that he had been living there quite a long while, and I asked him why he did not Homestead the land, and as I remember now he stated that he had written the Land Office, but could never get any satisfaction. The thing drifted along that way, I saw that he was in hard circumstances and a real bonefides settler on the land and I felt that if the Land Office at Natchitoches knew the facts, they would be glad to accept his filing and the Government would grant a patent, and I voluntarily wrote a letter to the Land Office at Natchitoches, stating the facts as I found them and a little later I think that he secured papers and made the filing. I have a dim recollection that I made them out for him, but I would not be sure. Anyway my letter brought information from the Land Office and he proceeded from that day to make the Homestead Entry.

Q. At that time was Mr. Stockley's family living with him on the land?

A. Yes, sir.

69 Q. At the date of this application, were there any indications or anything to make a reasonably prudent man believe that this land was underlaid with oil or gas deposits?

A. The condition seemed to be very remote. There was some drilling at Caddo City, the Savage Bros. drilled down fifteen hundred feet, what was known as Well No. 1, and

they found some oil in that well, which was about a quarter of a mile from Caddo City.

Q. In the same sections as Caddo City?

A. Yes, sir, within a quarter of a mile, then there was another well drilled about two miles West from that point, which was known as No. 2, drilled by Atlanta, and Texarkana people. That well reached a depth at the time that Savage Bros. found oil in his well, of about a thousand feet but nothing showed up, no gas or oil. Later it was drilled on to eighteen or nineteen hundred feet and around eighteen hundred feet they had a little gas in that well.

Q. There was a well what distance East of the Stockley tract, it was East of the Lake from him, in Section Three?

A. Yes, sir.

Q. Now, that was abandoned?

A. Yes, sir, a dry hole.

Q. You say that Stockley was actually cultivating the land?

A. Yes, sir, part of it, cultivating some of it.

Q. All the time he was there?

A. Yes, sir.

Q. Is Mr. Stockley a man of any education?

A. Not much, I do not think.

Q. What is his physical condition?

A. Well he is deaf, hard of hearing, was then, I suppose he is yet, but he was physically able to work.

Q. And was actually cultivating the land?

A. Yes, sir, part of the land, not all of it, but was cultivating part of it.

Q. How long had Stockley been living there?

70 Q.[A.] He told me that he had been there some years, but I do not remember now, my impression then was that he had been there more

than long enough to have a patent at that time, been continuously a bone fides settler, and that is why I wrote the office, just a matter of humanity on my part.

Q. Mr. Bell, on January 16th, 1909, Mr. Stockley made non-mineral affidavit, with the final proof, at that time had any minerals been found on this land?

A. No, sir, not that I know anything about.

Q. At that time, was there any method for Mr. Stockley to learn or any reasonable man to find the land then chiefly valuable for oil or gas?

A. The chances seemed very remote.

Q. Was the local or surface indications such to put him on notice?

A. No, sir, no surface indications at all, none.

Q. At that time no oil had been found within several miles of this land?

A. I believe not. I would not be sure as to the dates. I go all over the country. Louisiana, Texas and part of Arkansas. I do not think there was anything there at that time to make it look attractive as oil territory.

Q. You live at Shreveport, or you were at one time located at Shreveport?

A. Yes, sir, I was the only man they had up there from 1905 until sometime in 1906. I was here watching what developments went on and attending to whatever business we had here, but was not doing anything in the way of acquiring property. We acquired the Potter's point, because some parties at Jefferson had the land for sale and I thought possibly they wanted to lease, as they did not state so, and I went up there with Mr. Webster and when they told me it was for sale I told them I would come back to Shreveport that we were not buying any land but he asked me to go and look at it, which I did and I asked what they would take, as a matter of courtesy, thinking he would put a price of two or three dollars an



71           acre and I would not take it, but when he made the price I informed the Beaumont office that there was enough timber to pay for it, so we bought it.

On Cross Examination he said:

By Mr. Ellison:

Q. Mr. Bell, I understood you to say that you all bought the Potter tract for a little over a dollar and ten cents per acre?

A. Yes, sir, a little over a dollar an acre.

Q. You got a fee simple title at that price?

A. Yes, sir.

Q. Did you buy it for an oil Company?

A. Yes, sir, well I bought for C. H. Markham, who was then General Manager of the Company. I think the title was taken in his name, as I did not know whether the Company wanted it or not.

Q. You bought in 1905?

A. Yes, sir, that is my recollection, of course I would not be positive about the date.

Q. Was it prior to the time that you wrote the letter to the Land Office in Mr. Stockley's behalf?

A. Yes, sir, that is what took me up into that country, when I went there to look at that land, and I found Mr. Stockley living there on this land.

Q. Did Mr. Stockley know that you bought the Potter track for an oil Company?

A. He knew I had purchased, or was to purchase the tract, but whether for an oil Company I do not know. I do not remember that I stated that at all.

Q. Was anything said by you to Mr. Stockley, or by him to you with reference to the future of that country, with reference to oil or gas?

A. I do not remember any conversation, at all, along that line. I don't think there was any.

Q. You bought the Potter tract, as an oil proposition.

A. No, sir, I simply bought it, because there  
72 was timber enough on it to pay for it, and we  
would lose nothing on it by reason of minerals or  
non-minerals.

Q. Your Company was not in the timber business?

A. No, sir, while in a way the Company has one or  
two little plants in the country where they make barrels  
for oil, and in that way they are in the timber business.  
Later on they sent a man there to examine the timber,  
to see whether they could get barrel timber from it or  
not.

Q. Has any prospecting ever been done on this Pot-  
ter tract?

A. I think two wells have been drilled, but I have  
never been to either.

Q. Do you know when they were drilled?

A. I think it was a year or so ago.

Q. Are they producing wells?

A. I understand that they have two small producing  
wells in the North East corner of the Potter tract.

Q. Since the purchase of the Potter tract, have you  
purchased any other land in the vicinity of the Stockley  
tract?

A. No, sir. I assisted in making purchases in the  
Caddo field at a later date, all around Oil City and Caddo  
City.

Q. Are you a Geologist?

A. No, sir.

On Re-Direct Examination he said:

Q. Mr. Bell, the same interests that own the Gulf Re-  
fining Company and the Guffy Company own the Gulf  
Cooperage Company at Texarkana?

A. Yes, sir.

Q. This factory wanted this timber for staves?

A. Yes, sir, I suppose they thought, or had that in view. I told them there was enough tie timber to pay for it, and they run no risk in making the purchase. We did not seek it, it sought us.

Q. Was any prospecting done on the Potter land, before the Burr well was completed?

A. No, sir, none.

Q. It was done after the completion of the  
73 Burr well?

A. Yes, sir.

Q. When was the Burr well drilled.

A. I could not say, but a little over two years ago, as I remember—I have not been there continuously, and do not remember the dates that I was up there. I was up there at the time it came in, but I do not remember the date, but it was a little over two years ago, about that time.

GEORGE M. VAUGHN, witness for defendant being first duly sworn, testified as follows:

On Direct Examination, he said:

Q. Mr. Vaughn, where do you live?

A. Up in Ward One, near the Anais Club house.

Q. You are acquainted with Thomas J. Stockley?

A. Yes, sir.

Q. You know the land described as the Frl SW 1-4 of NE 1-4 and Frl SE 1-4 Section Five and Frl NW 1-4 of NE 1-4 of Section Eight, Township Twenty, North, Range Sixteen West, known as the Stockley entry?

A. Yes, sir.

Q. Do you know whether Mr. Stockley ever lived on that land?

A. Yes, sir.

Q. For how long a time?

A. He lived there, I think about Thirteen or Fourteen years.

Q. He does not live there now?

A. No, sir, he don't live there now.

Q. Do you know why he left the Homestead?

A. His wife was in bad health and he moved to Mooringsport to see if it not would be an advantage to her health, and he went back and forth to the place.

Q. Do you remember the time that he made his final proof?

A. Yes, sir.

Q. About what was that date?

A. I do not remember the date.

74 Q. At the time that he made his proof, do you remember whether or not any oil wells had been drilled on the west side of the Bayou, at the time he made his first proof?

A. No, sir, I do not know of any, unless it was in the Styles field, that well up there.

Q. I believe that you stated that you do know that Mr. Stockley worked part of this land?

A. Yes, sir.

Q. Cultivated it?

A. Yes, sir.

Q. Have any improvements on it?

A. Yes, sir, a house.

Q. You are one of the witnesses who testified on his final proof are you not?

A. Yes, sir.

Q. The testimony you gave on final proof is correct, was it not?

A. Yes, sir, it was.

Q. At the time that Mr. Stockley made final proof, were there any indications of oil or gas or coal or any other minerals on this property?

A. None that I know of.

On Cross Examination, he said:

Q. Mr. Vaugh, how long did you say Mr. Stockley lived on this land?

A. Thirteen or Fourteen years.

Q. All the time?

A. Yes, sir, up until three or four years ago when he moved to Mooringsport, on account of the health of his wife.

Q. He has not been living there since?

A. I do not remember the date that he left it, I did not pay any attention to the date.

Q. Was he living on the land at the time that he made final proof?

A. I do not think he was that date, but he was having the land worked and had property there on the land.

Q. About how long had he been off of the  
75 Homestead at the time that he made final proof?

A. I do not remember that either, he had not been off, I reckon over three, four or five months, I do not remember exactly how long.

Q. He has not lived on the Homestead since?

A. Yes, sir, he moved back since then and stayed a while and then moved back to Mooringsport.

Q. You know of your own personal knowledge, that he cultivated some of the land for five years before he made proof?

A. Yes, sir, I seen him working it.

Q. You know, of your own personal knowledge, he lived on the land for five years before he made proof?

A. He moved off before the five years expired on it, but he had property on the land and had it worked.

Q. About how long did he live on it continuously?

A. About four and a half years, and he moved off a short while before he made final proof, but he had been

living there thirteen or fourteen years before he made the proof.

Q. My question is this, how many years did he lived on the Homestead, before he made final proof?

A. About four or four and a half years.

Q. Not over four and a half years?

A. I do not know exactly what time he moved to Mooringsport, on account of his wife's health, but he was having the land worked and looked after it, he was going back and forth. He moved off on account of his wife's health, and then he moved back there and stayed a while then he moved back to Mooringsport.

Q. At the time he made his final proof, he had not lived there five years?

A. No, sir, not quite.

Q. Do you know that he lived there four years?

A. I am pretty sure he did.

Q. You are pretty sure he did, but would not say positively?

A. No, sir, I did not keep up with it that close, but he has made it his home ever since thirteen or  
76       fourteen years, he made application and lived on it until that time and then he moved to Mooringsport before he proved up on it.

Q. During those thirteen or fourteen years, he must have lived somewhere else than on his Homestead?

A. Always the same place, he never made application for several years after he was there on the place, and after he made application for about four of the five years he was living on the property.

Q. Did Mr. Stockley ever talk with you before he made final proof, about the value of this land for oil or gas?

A. No, sir, he never did.

Q. How far did you live from his Homestead during the twelve or thirteen years you say he lived on it?

A. Just across the lake, a mile and a half or two miles.

Q. How often did you go to this land?

A. I seen him, I suppose I went to the land nearly every month during the year, passed back and forth, in sight of it all the time, or nearly all the time in fishing about the lake by it.

Q. You know when it was first discovered this land contained oil and gas?

A. No, sir.

Q. Was it after or before he made final proof?

A. Afterwards.

Q. You know whether Mr. Stockley ever attempted to sell this land, or lease the land, before he made final proof?

A. No, sir, I do not.

Q. Do you know whether he ever received any offer to lease it before he made final proof?

A. No, sir, I do not.

On Re-Direct Examination, he said:

Q. Mr. Vaughn, you said that Mr. Stockley lived there four and a half years, you mean four and a half years from the time he made his entry?

A. Yes, sir.

Q. Before he made his entry, how long had he lived on the land?

A. Well, the understanding was he had been on the land Fourteen years, lived there several years before he made application then he lived there four and a half years and moved to Mooringsport on account of the health of his wife, then he came down to make final proof.

Q. You stated here in your testimony, in making the final proof that he built a house there about March 1<sup>st</sup>, 1897, and moved into it immediately?

A. Yes, sir.

Q. And lived there from that day on?

A. Yes, sir.

Q. And you also stated on the 5th of January, 1909, at that time you said he moved away about three months preceding that date?

A. Yes, sir.

Q. Before you were called as a witness in making the final proof?

A. Yes, sir, somewhere about that time, he left and went to Mooringsport on account of his wife's health.

THOMAS J. STOCKLEY, witness for defendant, being first duly sworn, testified as follows:

On Direct Examination, he said:

Q. You are the Thomas J. Stockley who made the entry across the lake?

A. Yes, sir.

Q. When did you make your final proof, about what date?

A. I do not know the exact date, the receipt will tell, in 1908 though I think, but I do not remember the date.

Q. How long did you live on that land, before you made final proof?

A. I moved there in 1895, and lived there about thirteen years longer than that I reckon, I filed on the land I think in 1905 and proved it up in 1908, made final proof you see on the Homestead, you see I got back time for the time I was on there.

Q. When did you lease it for oil or gas, before you made the proof or afterwards?

A. Afterwards.

Q. When did you first have an offer to lease it for oil or gas?



A. I could not hardly tell you and tell the truth about it. I do not know exactly when it was.

Q. When you made your final proof, was that before or after the Burr well came in? When was the first time you had any idea there was oil there, after the Burr well came in or before?

A. After it came in, I had done made final proof before that time. I had proven it up, no oil wells over there then.

Q. Had you ever heard of any oil being on that side of the lake before you made final proof?

A. No, sir, never had.

Q. Did you believe the land was oil or gas land, when you made final proof?

A. Well I had no right to think or believe, I did not know anything about it. I did not know there was anything there. I homesteaded the place for a home. I knew nothing about oil at that time. I went on the place for a home.

Q. Are you a married man?

A. Yes, sir.

Q. Did you live on there with your family?

A. Yes, sir.

Q. When did you leave the place?

A. I moved my family away to the Club house at Mooringsport, been about three years now, but I left part of my stuff there and I was on the place every few days, my wife was sick.

Q. You cultivated the place every year until you made final proof?

A. Yes, sir, from the first year I went there, cleared it up and fenced it.

Q. Your final proof says that you moved off of the land about two months before you made final proof, can you state how long you lived on the land, from the time you settled on it, up to the time you made final proof?

A. I went on the place in 1895, you can count it back yourself and see, that is when I moved on the place.

79

Q. You were there from 1895 until the day you made your final proof?

A. Yes, sir.

Q. You lived there all the time with your wife and family and cultivated the place every year?

A. Yes, sir, every year.

On Cross Examination, he said:

By Mr. Ellison:

Q. Mr. Stockley, you are very hard of hearing, are you not?

A. Yes, sir, I am very deaf.

Q. Where were you living when you leased your Homestead?

A. At the Club House, at the time I leased it, at Mooringsport.

Q. How long was it after you made final proof was it that you leased your land, after you made final proof?

A. I do not know, I cannot tell exactly. It was afterwards. I do not know what date, I could not swear to that, I have not the receipts or anything. The receipts were turned over to the Company. I cannot swear to that, that is the exact date.

Q. Mr. Stockley, had anyone approached you for the purpose of leasing your land, before you made final proof?

A. No, sir, they had not.

Q. Did any oil man ever tell you that your land possibly contained oil or gas?

A. No, sir, never did.

Q. Before you made final proof?

A. No, sir, nothing about it at all. I went on it as I said a while ago for a home, that is what I went on it

for. I did not know anything about oil wells, no oil wells on that side of the lake then, even when I made my final proof.

Q. Since you made final proof, it has been discovered beyond doubt that your land does contain oil?

A. Well there are oil wells there since I made my final proof, oil wells over there.

Q. When did they first begin to drill on your  
80 your land?

A. I could not tell you, but I think it was in March, I could not give you the date—I cannot recollect that far back.

Q. How long was it after you made final proof was it, that they discovered oil on your Homestead?

A. I do not know exactly how many months, I could not swear to that, it was afterwards but I do not know how long it was, I cannot recollect that well—I cannot recollect back that far, just in my head.

Q. Had any oil or gas been discovered west of Jeems Bayou or Ferry Lake, before you made final proof?

A. No, sir, not that I know of at all, the nearest was at Oil City, that I knew anything of.

Q. Did you ever work in the oil fields or any of the oil or gas wells?

A. No, sir, and never intend to.

Q. What has been your occupation since living on the Homestead?

A. Farming a little, fishing part of the time. I am a fisherman by trade.

Q. How much did the Gulf Refining Company pay you for the lease of your land?

A. Fifty seven hundred dollars.

Q. Is that lease in effect now, in force now?

A. Yes, sir, I think so

Q. Has that Company ever renewed the lease?

A. It never has run out.

Defendant suspends the taking of testimony but reserves the right to introduce further testimony on Monday, following the examination of the Government witnesses.

Pursuant to notice given, the defendant and his Counsel, the taking of testimony in the above cause was resumed at ten o'clock A. M., December 30th, 1912.

William B. Ellison and E. D. Stanford, were present to represent the Government, and the defendant  
81 being present in person and his attorney, Mr. J. A. Thigpen, of the firm of Thigpen and Herold being present.

W. R. THOMAS, being called as a witness on behalf of the Government after being first duly sworn, testified as follows:

On Direct Examination, he said:

By Mr. Ellison:

Q. Mr. Thomas, you live here in Shreveport?

A. Yes, sir.

Q. What is your occupation?

A. I am with the Producers Oil Company .

Q. What are your duties?

A. I am in charge of the Land Department in this office?

Q. Are you acquainted with Thomas J. Stockley?

A. No, sir, I do not think I am.

Q. You know the land embraced in his Homestead Entry in Sections Five and Eight, Township Twenty-one, Range Sixteen?

A. I do not know that I know what the Homestead covers but I know the location.

Q. Has your company done any prospecting in the vicinity of this land?

A. The nearest we drilled in that vicinity was on the Hunsicker lease, in Section Eight, and then we drilled over in Texas on the Pool lease.

Q. With what results?

A. We got one absolutely dry hole on the Pool lease and one well that will not produce enough oil to run its own pumps. On the Hunsicker lease we got a dry gas well and then after that got a fair little well.

Q. How far is the well you speak of from the Stockley tract?

A. Well, the Stockley tract runs pretty close to our Hunsicker lease, but the well is probably half a mile, the wells are half a mile apart.

Q. Do you know whether any wells have been  
82 drilled on the Stockley tract or not?

A. Yes, sir, I think there have been.

Q. Do you know when?

A. No, sir, I do not know when they were drilled.

Q. You know when the first wells were drilled West of Jeems Bayou?

A. The first wells drilled West of Jeemes Bayou, was some that were drilled there in March, 1910, but very little.

Q. From your knowledge of the developments of that territory, are you able to express an opinion whether or not this land is mineral in character?

A. I should not think it would be very valuable for its mineral qualities, because the developments of the Producers Oil Company have not been altogether satisfactory.

Q. Would you be able to express an opinion as to whether or not there are indications of a mineral character on this land, say on January 5th, 1909?

A. I am satisfied there was not any drilling at that time. If it there was I did not know it. The develop-

ments have been since that time in that whole part of the field.

No cross examination.

S. A. GUY, being called as a witness on behalf of the Government, after being duly sworn, testified as follows:

On Direct Examination, he said:

By Mr. Ellison:

Q. Mr. Guy, you live here in Shreveport?

A. Yes, sir.

Q. You are in the oil business, are you not?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. Ever since the starting of the Caddo field, eight years.

Q. You are thoroughly familiar with the developments of the field?

83

A. Yes, sir, as much so as anyone else.

Q. You know Mr. Thomas J. Stockley?

A. Yes, sir.

Q. You know where the Homestead of Stockley is located?

A. Yes, sir.

Q. Have you ever had occasion to lease any property in that vicinity?

A. Stockley offered me a lease on his and I would not take it.

Q. When?

A. Somewhere along in the early days of 1910.

Q. Had he made proof of his Homestead then?

A. I think he had.

Q. It was in 1910?

A. Yes, sir.

Q. Did you take a lease?

A. No, sir.

Q. Why not?

A. I could not handle it, I would not drill it, I did not want it.

Q. Did you at that time consider this land had mineral possibilities?

A. Yes, sir.

Q. Then your refusal to lease it, was not due to the fact you thought there was no oil or gas under it?

A. Well now, but anything in that country is possible, anything in that country has possibly got oil or gas under it, nothing in there at that time to make me want it.

Q. What were the condition of the developments around it in 1909?

A. I do not think there was anything around in there, or anywhere near there in 1909. The drilling at that time was several miles above there, in the Tress property, all the drilling on that side of the Bayou was up above Trees City.

Q. Had there been any discovery of oil or gas West of Jeems Bayou prior to January 5th, 1909?

A. I do not think.

84 Q. How far from this tract of land, were the nearest producing wells on January 5th, 1909?

A. Well, I think about that time, the nearest producing wells were right near Oil City, which would be three or four miles away.

Q. Would the developments you spoke of, indicate to a practical oil man, that this strata of oil, oil bearing stratum would underlie the Stockley tract?

A. No, sir, no more than a great deal of condemned territory that lay in between Oil City and the Stockley tract, that has since worked out pretty good, and there

was a well drilled in the spring of 1910, drilled over there, the Burr well No. 1, that was an awful good well, but that is what started the leasing in that particular territory at that time, that came in in the spring of 1910, I think.

Q. Do you know whether or not oil has been discovered on the Stockley tract?

A. Yes, sir, been small wells made on the Stockley tract.

Q. Is it paying?

A. Well if a Company has plenty of stuff around there, it could afford to work it, but with one well there I do not think they could afford to work it. I think the Gulf Refining Company own the well, though I am not sure.

Q. Mr. Guy, did you ever have any conversation with Mr. Stockley prior to January 5th, 1909, with reference to the oil or gas possibilities on the land?

A. No, sir, it was just a few days before the Burr well came in that Stockley wanted to let me have a lease on the land, to drill it.

Q. That was in 1910.

A. Yes, sir, just a few days before the Burr well came in. I did not know that he was proving out a Homestead. did not know but what he had had it for years.

Q. What did he offer to lease it for?

A. He offered to lease it for an eight royalty, straight to go and drill on it, no bonus whatever.

85            No cross examination.

Evidence closed.

I hereby certify that the above and foregoing Thirty-three pages contain a true and correct translation of my stenographic notes taken in the above numbered and entitled cause.



Shreveport, La., December 31st, 1912.

R. B. COOK,  
Stenographer.

I hereby certify that the above and foregoing thirty-three pages of evidence was taken before me on the days therein stated, in the above numbered and entitled cause.

Witness my hand and seal of office on this the 31st day of December, 1912.

S. N. KERLEY,  
Clerk District Court, Caddo Parish,  
Louisiana.

By R. B. COOK,

Deputy Clerk

86

15862

E—173

Thos. J. Stockley,  
to  
Gulf Refining Co. of La.

Lease.

State of Louisiana,  
Parish of Caddo:

Know all men by these presents: that I, Thomas J. Stockley, of Caddo Parish, Louisiana, and by these presents do grant, demise, lease and let unto the Gulf Refining Company of Louisiana, a private corporation hereinafter styled the "Refining Company", its successors and assigns, all of the oil, gas and other minerals in and under the premises hereinafter described, as also the exclusive right of drilling and operating thereon for oil or gas together with the right of way for and for and right to lay pipe lines to convey water, oil, steam or gas, and the right to have sufficient water, oil, and gas from the premises to

drill and operate any wells, that it may bore, and also such other privileges as are reasonable requisites for the conduct of said operations, and the right to remove at any time, from said premises, any and all property which may have been placed thereon by said Refining Company. The said premises as to which this grant of lease does apply are described as follows:

The fractional Southwest Quarter of the Northeast quarter and the fractional southeast quarter of section five and the fractional northwest quarter of the northeast quarter of Section eight, township twenty, North, Range sixteen West, containing seventy-one and twenty five one-hundredths acres.

To have and to hold unto the said Gulf Refining Company of Louisiana, its successors and assigns, for the term and under the provisions as follows: to-wit:

First: There is hereby expressly granted to said Refining Company the right at any time, before the expiration of the two years from this date to begin operations of drilling a well for oil or gas on said premises; provided, however, that should the said company bring in a well on the Burr tract, on which they are now drilling on the Martin G. Nall survey in Marion County, Texas, producing one hundred and twenty-five barrels of oil per day for thirty consecutive days, then within thirty days from the expiration of the said thirty days period, the said refining company is to begin operation of drilling a well on property herein leased. It is provided further that should the said Company drill any wells, along the Texas line of the Robert Potter survey, then for each well so drilled, it is to offset a well on the land herein leased.

It is further agreed that all wells to be drilled hereunder shall be drilled to the lowest known strata of oil bearing sand in the Caddo field, unless oil be first found in paying quantities.

Second: If the Refining Company shall begin the operation of drilling a well within the two years period from this date, as before provided, then the said Refining Company shall have the right to make as many attempts to find oil or gas as it pleased, and to continue the exercise of such right as long as it pleases even beyond the said term of two years, from this date; provided only such attempts shall be successive in the sense that until oil or gas be found not more than six months shall

87 elapse before the cessation or abandonment of work on one well and the beginning of work on another. It is further agreed that in the event any of the conditions shall arise as above provided which obligate said Refining Company to drill a well on said premises, and in the event the well so drilled shall prove to be a gas well, and not produce oil in paying quantities, the drilling of said gas well shall vest in the said Refining Company the right to the gas in and under the said premises, but shall not release it from the obligation to drill thereon for oil, and within six months from the time said gas well shall have been completed, it shall then begin the operation of drilling another well for oil on said premises, under penalty or forfeiture of its rights to the oil therein.

Third: If in the exercise of the right hereby conferred, oil or gas be found in paying quantities on said land, then the Refining Company shall deliver as royalty to the said Stockley, a free of expense one eighth part of all the oil saved from that produced on wells having a production of not more than two hundred barrels per day, and on all wells having a greater production than two hundred barrels per day, the lessor shall deliver, as royalty, one-sixth part of all the oil saved from that produced. Such delivery to be made either in tanks with connection by the lessor provided, or into any pipe lines that may be connected

to the well, the average daily production of a well shall be arrived at by taking the average of the daily production of each day of the calendar month.

If any well on said premises produces oil in paying quantities then the said leases shall be paid at the rate of \$100.00 per year for each and every well, such payments to be made at the end of each year.

Fourth: If, as a result of any exploration under the contract, any other minerals other than oil or gas shall be found in quantities deemed by the Refining Company to be paying, then it shall have the right to mine for and produce same, paying to the lessor what, under all circumstances, may be reasonable royalty.

Fifth: It is expressly declared that if oil, gas or other minerals or any of them be found in paying quantities then the said Refining Company shall become at once vested with an estate in and to all of the minerals underlying said land, with right to produce the same, and any and all of them as long as any one of said minerals shall be produced in paying quantities.

Seventh: It is further provided, that if oil or gas or other minerals in paying quantities shall be found, and the Refining Company, its successors or assigns hereunder, should conclude that it or they do not desire to operate long under this lease, then the right is conferred to surrender the same upon the payment of \$100.00 to the lessor and such right of surrender shall also confer the privilege of removing from said premises and all material placed thereon by said Refining Company, its successors and assigns.

Eighth: It is further agreed that all the conditions and terms herein shall extend to the heirs, executors, legal representatives, successors and assigns of the parties hereto.

The Refining Company has this day paid to the said J. C. Stockley, the sum of Five Thousand and Seven Hundred Dollars, the receipt whereof I do acknowledge, and which payment is received in full satisfaction of any and every right hereby granted.

This done, read and signed by the parties hereto, the said lessor and said Gulf Refining Company of Louisiana acting by W. B. Pyron, its agent in the presence of the undersigned, J. T. Spearman and J. B. Stockley, good and competent witnesses and before me, the undersigned Notary Public, in and for the Parish of Caddo, State of Louisiana, on this the 17th day of March, A. D. 1910.

88                    T. J. STOCKLEY,  
per R. L. STRINGFELLOW.  
THOMAS J. STOCKLEY, Lessor.  
GULF REFINING CO., OF LA.,  
W. B. PYRON, Agent.  
J. E. CROOM, Notary Pub.

Witnesses:

J. T. SPEARMAN,  
J. B. STOCKLEY.

Filed and recorded Mch. 19/10.

S. O. WILLIAMS, Dy. Clk.

Recorded in Book 59, page 209.

(H).

No. 1166

5 (D)

B

89            No. 1166            E 5 (a). Decision of Register and Receiver.

Copy.

JGM            Department of the Interior.            E-204

United States Land Office,  
Baton Rouge, La.

March 1, 1913.

United States,  
vs.  
Thomas J. Stockley, Defendant.

Contest No. 317.

Invl. HE S.03472. For Frl SW $\frac{1}{4}$  of NE $\frac{1}{4}$  & Frl SE $\frac{1}{4}$ ,  
Sec. 5, and Frl. NW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 8, T. 20 N., R.  
16 W., La Ler.

Docket Record.

11/6/05    Entry allowed.  
2/27/12    "P" directs proceedings.  
4/15/12    Notices issued.  
8/13/12    C. F. D. sets Sept 18, 1912, Shreveport, La.,  
for hearing.  
8/17/12    All parties notified this date.  
9/11/12    C. of F. Div. changes date for hearing to  
11/19/12.  
9/13/12    Notices registered.  
11/5/12    C. of F. Div. asks date of hearing be changed  
to 12/28/12.  
11/7/12    Case re-set—All parties advised.

- 1/10/13 Testy recd.  
 1/10/13 Clerk of Court Voucher 4-665d sent C. of F.  
 Div. for settlement.  
 1/10/13 Mr. Kerley, C. of C. advised.  
 2/18/13 Brief filed by attorneys for defendant.  
 3/1/13 Decision of R. & R. Holding entry intact.

Opinion of Register and Receiver.

We believe that this entry should be held intact for this reason, the testimony of all the witnesses it seems to us clearly shows that the entryman settled on this land long prior to the time when there was anything known about either gas or oil in that portion of the United States and had made some efforts to obtain title to the same, though such efforts were ineffectual largely due to the fact that entryman was very ignorant and did not know how to proceed. Also his proof was made after nearly five years had elapsed from the time of making his entry and before any oil or gas had been discovered closer than five miles of the land and a dry well had been drilled between such producing well and the land. We think that the discovery of oil on the premises a long time after the Final Proof should not operate to forfeit this entryman's entry even though he did lease his land for gas and oil prospecting.

We, therefore, respectfully recommend that the entry herein be held intact and that the entryman be allowed to perfect his title to the land herein involved.

(Signed) JOHN F. NUTTALL,  
 Register.

(Signed) LOUIS T. DUJAZON,  
 Receiver.

90      Item 5 (b)      Gov. E A.

In reply please refer to Baton Rouge 03472 "N" HHH

1x

1 x

1 x CFD

E-56

Department of the Interior.

26241

General Land Office.  
Washington, D. C.

December 22, 1913.

Address only the  
Commissioner of the  
General Land Office.

United States,  
vs.  
Thomas J. Stockley.

Involving homestead entry 03472.

Decision of Register and Receiver Reversed, Subject to  
Appeal.

Register and Receiver,  
Baton Rouge, Louisiana.

Sirs:

November 13, 1905, Thomas J. Stockley made Natchitoches homestead entry No. 10817, later serial 0188, now Baton Rouge 03472, for the fractional SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$ , Sec. 5, and NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 8, T. 20 N., R. 16. W., containing 71.25 acres, and on January 5, 1909, submitted final proof. Final certificate of entry did not issue, on ac-



count of the Secretary's withdrawal of December 15, 1908, for oil. The land was subsequently included in Petroleum Reserve No. 4, by executive order of July 2, 1910, under the act of June 25, 1910.

Based upon an adverse report by a special agent, dated February 10, 1912, proceedings under the circular of January 19, 1911 (39 L. D., 458), were directed by letter "P", dated February 27, 1912, charging that said land is mineral in character, being chiefly valuable for oil and gas, and that the claimant knew, or should have known, from surrounding conditions and developments that the charges issued and on May 11, 1912, answer was filed, denying the allegations. It is there stated that no oil was discovered on said land until June, 1910. **Hearing**

91      Baton Rouge 03472 "N" HHH

**E-59**

was ordered, and, after several continuances, the taking of testimony began, before the clerk of Court at Shreveport, on December 28, 1912. On February 18, 1913, brief was filed by attorneys for the entryman, and on March 1, 1913, you rendered your joint decision in favor of the claimant. The papers were forwarded by your letter of March 6, 1913.

The entire record has been carefully considered here. The land is bounded on the west by the Texas state line, and on the north, south and east by James Bayou, a northerly projection of Ferry or Caddo Lake. According to the final proof, the entryman first established residence on the land March 10, 1897, when his house was finished; with his wife and one child, he resided thereon continuously up to about 3 months before proof, leaving then on account of ill health; he has cultivated about 12 acres for 12 seasons; and the improvements, valued at \$100, consisted of a two-room house and the 12 acreage clearing.

At the hearing, the first witness for the Government was W. B. Pyron, of the Gulf Refining Company of Louisiana, who had known the Caddo field only since November, 1909. After testifying that his company early in 1910 leased the entered land and thereafter drilled three wells, of which two had produced, and one was even then producing; he stated that he would not consider this land now as very valuable for oil or gas. This lease was obtained upon payment to the entryman of \$7,000, in addition to certain royalties, the drilling being induced by results obtained on the nearby Burr tract in November, 1909. He was of opinion that the geological formations east of the bayou are entirely different from those west, because a different character of sand and a different grade of oil was discovered there, at the same depth. There is no regularity of sand in either place, but in the Oil City district they obtain a heavy black oil, as compared with the more valuable, light brown oil of the bayou region.

The first well west of the bayou was the J. C. Trees Oil  
92            Baton Rouge 03472 "N"       HHH       E—60

Company's well to the north, possibly that described on page 149 of Bulletin 429 of the United States Geological Survey (which report the witness described as accurate in the matter of dates and depths). This well, in Sec. 27, 21 N., R. 16 W., was completed December 6, 1918, and yielded 50 barrels of oil with much gas, on January 20, 1909. In February, 1909, this well yielded 125 barrels a day. This company had a lease on a large block of land thereabouts, nearly all in T. 21, N., R. 16 W., and had offered to sell out to the Gulf Refining Company, but, on the latter's rejection of the offer, the Standard Oil Company succeeded to the rights under the leases, which later proved to be good territory. The J. N. Guffy Petroleum Company purchased land at Potter's Point, west of this entry, in August 1908, \$1½ an acre, in fee.

L. B. Webster, another employee of the Gulf Refining Company of Louisiana, had been familiar with the field five years, and corroborated the testimony of the first witness. At time of final proof, there were no indications of oil or gas on the land, and no wells within 2 miles, the nearest being 3 miles to the east. His company's first lease west of the bayou, was made after the Trees well came in. The company had an offer of a lease in Sec. 5, early in 1909, at \$1 per acre, but refused to accept it, believing no oil there.

At this point the case of the Government was continued, by the special agent, and the claimant's case was presented. Witness W. W. Bell, of Texas, an oil operator since 1901, was present and general manager of the Eagle Petroleum Company of Louisiana, though formerly in the employ of the J. N. Guffey Petroleum Company, and the Gulf Refining Company. In 1905, he had made a deal for Potter's Point (in Texas, west of the entry), including 3,000 acres, at \$3,000 cash, and \$300 commission, at 10 per cent, amounting to a little over \$1 an acre. At that time the claimant was living on the entered land, and it was at the witness' instigation that the homestead entry was made. At the time this application was filed, there was some drilling at Caddo City,

93            Baton Rouge 03472 "N"    HHH            E-61

and oil had been found. Two miles west of this land gas had been obtained in a well at 1800 or 1900 feet. In January, 1909, no minerals had been discovered on this entry. The claimant knew of the sale of Potter's Point, but the witness was of opinion that they did not discuss oil matters, when he was there. There was no prospecting in the vicinity until the Burr well was drilled, two years before the hearing. The same interests that own the Gulf Refining Company and the Guffey Company

own the Gulf Cooperage Company at Texarkana, and Potter's Point was purchased partly for the timber there.

Witness George M. Vaughn had known the land and the claimant a number of years, and lived across the lake from him. Vaughn was of opinion that there were no wells near at final proof, unless the Stiles well, and the claimant never discussed with him the possible oil or gas value of his entry. The claimant's few absences from the land were caused by trips to Mooringsport on account of his wife's health, but in all, he had lived on the land for 14 years.

The claimant himself testified that he leased the land after final proof, but did not remember when he was first offered a lease. There were no oil wells near, on the west side of the bayou, and he had never heard of any oil there prior to final proof. He was not approached by anyone, to lease, until after January, 1909, and the first well on his land was in March, probably, 1910. (The lease in evidence was dated March 17, 1910, and Pyron was the Company's agent in signing it). This lease brought him \$5,700 and had not expired at time of hearing. He stated that he was a fisherman by trade.

For the Government, W. R. Thomas testified that he was an agent of the Producers Oil Company, and that his company's nearest wells were on the Hunsicker and Poole leases, over in Texas. On the former, one fair well had yielded oil, and a dry gas well had been secured, also a dry well on the Poole lease. He stated that the first wells west of the bayou were drilled in March, 1910.

S. A. Guy, in the oil business eight years, stated

94           Baton Rouge 03472 "N" HHH E-64.

that the entryman offered him a lease in 1910, but the offer was refused because he couldn't handle it. He then believed the land had min-

eral possibilities, because anything—in the line of oil and gas developments—is possible in that country. At time of final proof, the nearest drilling was several miles north in the Trees property. The nearest wells were 3 or 4 miles east toward Oil City, and some of the land between Oil City and the entry, though once condemned, had later worked out favorably. The Burr No. 1 well, in the spring of 1910, started the leases in the direction of the entry, and it was just before this well came in that the claimant offered to lease to Guy. The latter did not know the claimant was proving up a homestead, the offer being a straight lease at one-eighth royalty, to go on and drill, with no bonus.

The early wells on both the Stiles and the Burr properties are described in Bulletin 429, at page 132. The Gilbert tract is in Sec. 13 (see p. 136, Bulletin 429), on the east shore of the lake, and has yielded much gas, its history of development dating back to 1907. A picture of a well on the Gilbert tract in December, 1908, faces page 138. The Producers No. 2 well, in Sec. 12, T. 21 N., R. 16 W., blew out in 1905, and, with the nearby Producers No. 3, is described on page 136. The following quotations are also found on page 136:

Gas in immense quantities seems to have a more general distribution than oil in the Caddo field. For years gas has been obtained from the Nacotoch sand beneath Shreveport, but in the last 5 years gas has been found in enormous quantities in the region from Mooringsport north to Vivian and from points west of James Bayou east to Dixie.

The Government withdrew this land from entry the month before final proof was submitted, and the oil and gas development, based on results obtained to the north, east and west of the entry, followed soon after. It does

not appear to be a contention of the claimant that the mineral character of the land has not been established, but the sole question is: Was the land known to contain oil or gas prior to January 5, 1909? There is nothing in the record to impugn the claimant's residence and cultivation under the homestead law, and there is

95           Baton Rouge 03472 "N" HHH.           E-65.

no doubt but that he settled on the land in good faith, for a home, in ignorance of possible values for oil and gas. But his final proof was not made until the oil companies were becoming active in their developments, in his vicinity. It is true that those developments west of the bayou and lake were not extensive at that time, but they were sufficient to put him on notice of the character of his own land. The matter of oil and gas drilling was not a new thing in that vicinity in 1909, as numerous pipe lines were already laid, east of the lake.

Your decision is, accordingly, reversed, and the homestead entry held for cancellation, subject to appeal to the Secretary. You will serve notice under the rules, and, in due time report any action taken, with your evidence of service.

Attention is called to the fact that, according to the latest township plat, approved July 24, 1846, section 5 contains two non-contiguous tracts, the entered tract containing 20.96 acres. The only part of Sec. 8, contiguous to this portion of Sec. 5, contains 3.79 acres. By conforming the entry to this plat, there can be no fractional SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 5.

Very respectfully,

CLAY TALLMAN,

Commissioner.

11/19/13 McC.

Item 5-B Gov. Ex. A.

96 P-1-(d)

Department of the Interior  
United States Geological Survey  
Washington.

E-53.

Office of the Director.

March 2, 1914.

2/26/14.

HV4 fl.

3/3/14 N.

The Commissioner,  
General Land Office.

In reply to your letter of April 9, 1913 ("N" Baton Rouge 03472 HHH), requesting information relative to the mineral character of the following land in Louisiana, Louisiana Meridian, included in homestead entry 03472, made by Thomas J. Stockley:

T. 20 N., R. 16 W., Sec. 5, SW $\frac{1}{4}$  of NE $\frac{1}{4}$  (fractional),  
SE $\frac{1}{4}$  ((fractional));  
Sec. 8, NW $\frac{1}{4}$  of NE $\frac{1}{4}$  (fractional).

The records of the Survey show this to be mineral land chiefly valuable for deposits of petroleum and natural gas and to be embraced in Petroleum Reserve No. 4, created by Executive Order of July 2, 1910, the land having been previously withdrawn by order of the Secretary, dated December 15, 1908.

The land is located on the west side of the James Bayou and is bounded on the west by the Texas-Louisiana State line. The underlying rocks comprise superficial deposits of Pleistocene sand, clay and gravel, overlying the Tertiary and Cretaceous formations which yield the oil and gas production of the Caddo field.

The tract lies in the western portion of the Oil City district in a locality which has been developed for the

most part since June, 1909, although at the date of entryman's final proof, January 5, 1909, there were a number of oil and gas producing wells in Secs. 1, 11, and 12, of this township, about  $3\frac{1}{2}$  miles to the east, and oil showings had been found in wells on Sec. 3, about  $1\frac{1}{4}$  miles east. In November, 1908, oil and gas were obtained in a well, the Trees No. 1, located in the NW $\frac{1}{4}$ , Sec. 28, T. 21 N., R. 16 W., about 3 miles northeast of this entry. The well was completed in January, 1909, at a reported depth of 1,060 feet and yielded a settled daily production of about 125 barrels of oil and considerable gas.

97 The Commissioner.

E-54.

At the date of claimant's final proof other producing wells existed in Secs. 24 and 25 of the adjoining township to the north, about 5 miles distant, and a number of prospect wells, many of which were completed as oil or gas producers before the end of 1909, have been drilled within 3 or 4 miles of the land. Information as to the state of development work in this locality at the present time is not available in the Survey but in January, 1913, the conditions were reported as follows:

On the land embraced in this homestead entry which is under lease to the Gulf Refining Company two wells had been drilled. These wells, both of which yield petroleum, are located along the State boundary in Sec. 5, and offset other wells across the boundary in Texas. The Survey has no data showing the date on which these wells were completed or information regarding the amount of production.

In addition to the wells on this land there were in January, 1913, five other producing wells on the N $\frac{1}{2}$ , Sec. 5, on leases controlled by the Gulf Refining Com-



pany, and in the S½ Sec. 32, of the adjoining township to the north there were six producing wells on leases controlled by the Standard Oil Company. West of Sec. 5, in Texas, there were within a radius of one mile of this land twelve producing wells drilled by the J. M. G. Petroleum Company and the Knickerbocker Oil Company. In Sec. 8, south of the tract embraced in this homestead entry there were seven wells producing oil in January, 1913, and across the State boundary in Texas there were two producing wells on the Bonham lease.

East of this land a great amount of development work has been done and in January, 1913, there were no less than twenty-eight producing wells in Sec. 3, and four producing wells in Sec. 9, T. 20, N., R. 16 W.

In view of the facts above set forth there can be no other conclusion than that the land embraced in homestead entry of T. J. Stockley is chiefly valuable for oil and gas. Should more detailed information as to production be required, however, an examination by your Field Service will be necessary. Minerals of economic importance other than oil and gas do not occur on the land. More detailed information concerning the geologic

98 The Commissioner.

E-56.

conditions beneath this land and concerning development work at the date of filing of this homestead entry was furnished you in letter of July 14, 1911, in reply to your letter of February 27, 1911 ("P" Natchitoches 0188 ACB).

GEO. OTIS SMITH,

Director.

P 1-(d).

99

Department of the Interior,  
Washington.

D-26241.

August 26, 1915.  
"N"

Thomas J. Stockley.

Baton Rouge O3472.  
Motion for rehearing.  
Denied.

Motion for Rehearing.

Thomas J. Stockley filed motion for rehearing of departmental decision of July 9, 1915, affirming the decision of the Commissioner of the General Land Office, ruling him to take surface patent or suffer cancellation of his homestead entry for the fractional SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$ , Sec. 5, and NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 8, T. 20 N., R. 16 W., L. M. Baton Rouge, Louisiana, on the ground that the land has been withdrawn for a petroleum reserve by Executive order of July 2, 1910.

Motion for rehearing is based on the fact that in a letter by the Commissioner of the General Land Office of July 14, 1910, the register and receiver were informed that withdrawal made December 15, 1908, was vacated.

Examination of the records of the Department and General Land Office show that no such revocation of the order of withdrawal of December 15, 1908, was ever made.

June 3, 1910, the Director of the Geological Survey reported to the Department that there was no sufficient evidence of mineral character to warrant continuation of the withdrawal with respect to certain lands, among which were Ts. 20 N., Rs. 10 to 15 W., L. M. This report the Secretary approved June 4, 1910, and the withdrawal of December 15, 1908, was revoked as to those townships, but no revocation was made as to the township wherein this land lies. At the time of final

proof, January 5, 1909, the withdrawal was in full force and was afterwards consummated by a petroleum reserve.

The motion, therefore, presents no reason to recall, vacate, or modify said departmental decision, and the same is adhered to.

100 (Signed) A. A. JONES,  
First Assistant Secretary.  
E-28.

Department of the Interior.  
Washington.

D-26241.  
Ex parte

July 9, 1915.  
"N"

Thomas J. Stockley. Baton Rouge 03472.  
Homestead entry held for  
cancellation.  
Modified.

#### Appeal from the General Land Office.

November 13, 1905, Thomas J. Stockley made homestead entry for the fractional SW./4 NE./4 and SE./4, Sec. 5 and NW./4 NE./4, Sec. 8 T. 20 N., R. 16 W., containing 71.25 acres of land, in the Baton Rouge, Louisiana, land district.

December 15, 1908, the land was included in an Executive withdrawal on account of its oil and gas deposits.

January 5, 1909, the entryman submitted final proof upon his entry, paid the fees and commissions, and receiver's receipt issued January 15, 1909.

By Executive order dated July 2, 1910, issued under the act of June 25, 1910 (36 Stat., 847), the land was included in petroleum reserve No. 4.

Upon the basis of a report dated February 10, 1912, adverse to the entry, submitted by a special agent of the General Land Office, the Commissioner, by letter of February 27, 1912, directed that proceedings be instituted, charging that the land is mineral in character, chiefly valuable on account of its deposits of oil and gas, and that the claimant knew or should have known from surrounding conditions that the land was so valuable at the time final proof was submitted.

101

E-29.

D-26241.

As a result of the hearing had, the local officers and the Commissioner found the land to be oil in character, and for this reason the entry was, by Commissioner's decision of December 22, 1913, held for cancellation. An appeal filed on behalf of entryman from that decision has received careful consideration, and the Department finds, upon examination of the record, that the decisions below as to the character of the land were warranted by the evidence.

The question has arisen as to whether or not, final receipt having issued, as hereinbefore stated, January 16, 1909, the confirmatory provisions of the act of March 3, 1891, (26 Stat., 1095), have operated so as to preclude consideration of the adverse mineral report, the evidence taken at the hearing, and the application to this case of the act of Congress approved July 17, 1914, (Public No. 60), providing for the reservation to the United States of oil and gas deposits and the patenting of the land to entryman subject to such reservation.

As already recited, the lands were withdrawn by the Executive December 15, 1908, prior to the submission of final proof, and that this withdrawal was legal and binding is confirmed by the decision of the Supreme

Court of the United States February 23, 1915, in the case of United States v. Midwest Oil Company et al. Said withdrawal expressly provided that—

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4.115.

The effect of this order was to suspend this and other entries in like situation and the receipt issued by the receiver in this case was merely an evidence of the payment of fees and commissions and did not and could not relieve the entry from the suspension created by said order of December 15, 1908.

102

E-30.

D-26241.

Under the circumstances it must be held that the submission of final proof, the payment of the fees and commissions and the issuance of receivers receipt therefor did not operate to defeat the effect of the withdrawals theretofore, and thereafter within less than two years after date of said receipt, made and the subsequent investigation by this Department to determine and verify the character of the land, whether mineral or non-mineral,

to the end that the withdrawal might be modified or vacated if the land be found to be non-mineral or that the act of July 17, 1914, be given application if the land be determined to be mineral in character.

The investigations made and the evidence submitted convince the Department that the lands are, and were at date of final proof, valuable for their deposits of oil or gas, and that consequently this Department is, under the circumstances, without authority to issue final certificate and patent for said land, including the said mineral deposits. If patent be issued to the entryman, it must be under the provisions of the act of July 17, 1914, *supra*, reserving to the United States the deposits of oil and gas in the land. The decision of the Commissioner, finding the lands to be mineral in character, is therefore affirmed, but under the circumstances the Department finds no evidence of bad faith existent at the time of the original entry in 1906 and is of the opinion that the entryman may be given a limited patent under the act of July 17, 1914. As thus modified, the Commissioner's decision is affirmed, and should this decision become final, the entryman will be permitted to take patent under the provisions of said act of July 17, 1914.

(Signed)

A. A. JONES,

First Assistant Secretary.

103

P 1-(f).

WJH

1 x

2 x

HHH

1 x for Chapin &amp; Duvall

Department of the Interior  
General Land Office

Washington, January 21, 1916.

Address only the  
Commissioner of the  
General Land Office.

Cancelling entry.

Register and Receiver,  
Baton Rouge, Louisiana.

Sirs:

In the case of homestead entry 03472, made by Thomas J. Stockley, the Department rendered decisions on July 9, 1915, and August 26, 1915, permitting the entryman to file consent to take surface patent for his land, under the act of July 17, 1914, reserving to the United States all deposits of oil and gas. The decisions were promulgated by office letter "N," dated September 14, 1915, a copy of which was served upon the entryman's attorneys September 23, 1915. Your letter of November 2, 1915, inclosing such evidence of service, reported no action taken.

By office letter "N," dated November 17, 1915, to your office, you were directed to serve a copy of letter "N" of September 14, 1915, upon Stockley himself, granting him thirty days for filing consent to patent under the act of July 17, 1914.

Your letter dated December 21, 1915, transmitted a communication from Stockley's attorneys dated December 18, 1915, in which they state that Mr. Stockley has handed them your notice of November 20, 1915. The attorneys state as follows:

"As representing Mr. Stockley, this is formal notice that Mr. Stockley will not file any consent to the issuance of patent under the act of July 17, 1914. On the contrary, as the decision of the Land Office and of the Secretary herein are both clearly illegal, Mr. Stockley will stand upon his vested rights; and declines to recognize any right or power in the Interior Department to force him to relinquish his property rights in the land, in whole or in part.

"Please transmit this to Washington as Mr. Stockley's reply to said notice."

104        It thus appears that the entryman, who has been represented both by local and resident counsel, has been fully advised as to his rights to accept surface patent under the act of July 17, 1914, but after such due notice has declined to file such consent. Therefore, the entry is hereby formerly cancelled. So note on your records and advise the entryman hereof by ordinary mail, also his attorneys.

Very respectfully,

CLAY TALLMAN,

Commissioner.

Board of Law Review  
By W. H. Lewis  
1-19 RAP.

105

4-207.

DMG-"FS"

"B"

Department of the Interior  
General Land Office

CRGO

Washington, D. C., November 24, 1917.

I hereby certify that the annexed copy of final receipt, form 4-140 which was in use in March, 1891, prior to the passage of the act of March 3, 1891, (26



Stat. 1095) is a true and literal exemplification of the receipt found on file with New Orleans final certificate No. 3368 in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,  
Acting Assistant Commissioner of the  
General Land Office.

DMG-1 A C. B. 151.

4-140.

Final Receiver's Receipt No. 3368. Application No. 8051.  
Homestead.

Receiver's Office, New Orleans, La.

March 2, 1891.

Received of Octave Harrington the sum of Four Dollars Thirty Cents, being the balance of payment required by law for the entry of Lot No. 4 of Section 3 in Township 11 South of Range 1 East, La. Mer., containing one hundred and 62/100 acres, under Section 2291 of the Revised Statutes of the United States.

\$4.30

A. S. JACKSON,

Receiver.

\$1.80 Testimony fee received. Number of written words 1200. Rate per 100 words, 15 cents.

Filed Mar. 1, 1918. W. B. Lee, Clerk. Filed Apr. 7, 1919. E. C. Jackson, U. S. Dist. Court, West. Dist. Dpty. Clerk.

106 No. 1166.

P/4.

4-207.

DMG-"FS"

"B"

Department of the Interior  
General Land Office

CRGO

Washington, D. C., December 6, 1917.

I hereby certify that the annexed copy of final certificate form 4-196 which was in use in March 2, 1891, prior to the passage of the act of March 3, 1891, (26 Stat. 1095), is a true and literal exemplification of the final certificate found on file with New Orleans final certificate No. 3368 in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,

(Seal)

Acting Assistant Commissioner of the  
General Land Office.

4-196.

Homestead.

Land Office at New Orleans, La.

March 2, 1891.

Final Certificate  
No. 3368.

Application No. 8051.

It is hereby certified that, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Octave Harrington of Acadia Par., La., has made payment in full for Lot No. 4 of Section No. Three (3) in Township No. Eleven (11) South, of Range No. One (1) East, of the Louisiana Principal Meridian, containing one hundred 62/100 acres.

Now, therefore, be it known, that on presentation of this Certificate to the Commissioner of the General Land Office, the said Octave Harrington of Acadia Parish, La., shall be entitled to a patent for the Tract of Land above described.

CHAS. C. PAEFREY, Register.

Indorsed: Filed Apr. 7, 1919. Filed Mar. 1, 1918.

108

4-207.

"B"

J. D. C. Department of the Interior.  
General Land Office

Washington, D. C., February 23, 1918.

I hereby certify that the annexed copies of Receiver's receipt and Register's certificate No. 1865 Eureka, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,

(Seal) Acting Assistant Commissioner of the  
General Land Office.

B-1.

4-140.

Final Receiver's Receipt No. 1865. Application No. 4793.  
Homestead.

Receiver's Office, Eureka, California.

August 6, 1907, 1.

Received of Svan Hoglund of Deering, Oregon, the sum of Five Dollars, five cents, being the balance of payment required by law for the entry of NE $\frac{1}{4}$  SE $\frac{1}{4}$  and Fractional SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 34, and N $\frac{1}{2}$  SW $\frac{1}{4}$

and fractional SW $\frac{1}{4}$  NW $\frac{1}{4}$ , of Section 35 in Township 19 North of Range 4 East, H. M., containing one hundred & thirty-four & 60/100 acres, under Section 2291 of the Revised Statutes of the United States.

DANIEL J. FOLEY,

\$5.05

Receiver.

109      \$3.00 Testimony fee received; number of written words, 1335; rate per 100 words, 22 $\frac{1}{2}$  cents.

B-2.

4-196.

### Homestead.

Land Office at Eureka, Cal.,

August 6, 1907.

Final Certificate

No. 1865.

Application

No. 4793.

It is hereby certified that, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Svan Hoglund has made payment in full for Fractional SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 34, N $\frac{1}{2}$  SW $\frac{1}{4}$  and Fractional SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section No. 35, in Township No. 19 North, of Range No. 4, East, of the Humboldt Principal Meridian, containing 134 60/100 acres.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Svan Hoglund shall be entitled to a patent for the tract of land above described.

DAVID J. GIRARD, Register.

Reinstated.

Cancelled.

September 17, 1913, J. T. L., R.

7-25-1917.

J. F. Lewis, "H."

Pat. No. 596416

Aug. 10, 1917.

Approved, over

Correct description NE $\frac{1}{4}$  SE $\frac{1}{4}$  & Frac. SE $\frac{1}{4}$  NE $\frac{1}{4}$   
 Sec. 34 & N $\frac{1}{2}$  SW $\frac{1}{4}$  & Frac. SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 35, T. 19  
 N. R. 4 E., M. M. D. M. See copy of letter herewith.  
**HUMBOLDT.**

110 To Forester Feby. 21/08 T/H. H.  
 To R&R Feby. 2/6/08 T. H. H.

Patent to contain reservation according to Proviso to  
 the Act of Aug. 30, 1890.

Final Certificate No. 1865.

Homestead Application No. 4793.

Land Office at Eureka, Cal.

Aug. 6, 1907.

Sec. 34 and 35, Town 19 N. Range 4 E., H. M.

Description in Register's Certificate does not agree with  
 rest of papers or T. B. H. E. Inside. Canceled.  
 (See over)

Approved July 25, 1917. J. F. Lewis.

"P"—2221—109

"H."

111 Plaintiff I I.

(P 12)

No. 1166.

United States,

vs.

No. 1166.

Thomas J. Stockley, et al.

Statement prepared by James W. Neal, Special Agent  
 of the General Land Office:

Production to December 31, 1917.

Barrels	Value
84496.83	\$62581.85
Pipage earnings	7625.50

## Royalties.

	Barrels.	Value.
W. K. Henderson, Jr.,	4121.50	\$ 3037.72
H. L. Heilperin	260.69	189.13
T. J. Stockley	4683.50	3021.93
Natalie Oil Co.	1530.16	1459.18
Thigpen & Herold	80.24	156.49
Gulf Refining Co.	73820.74	54717.40

All above paid except W. K. Henderson, Jr., 2147.25 barrels, value \$2154.26; T. J. Stockley, 709.26 barrels, value \$815.67. These amounts held by Gulf Refining Company.

No. 1 Commenced April 22, 1910.  
Completed June 16, 1910.

No. 3 Begun Sept. 10, 1911.  
Completed Nov. 23, 1911.

No. 4 Begun Dec. 13, 1913.  
Completed March 13, 1914.

Offerings listed under numbers 5 to 16, inclusive, are offered by reference to the case of the United States vs. Sam W. Mason et al No. 1172, on the docket of this Court, it being agreed by counsel that the Court may examine the record in said cause with respect to said offerings, and same are incorporated in this record by reference. Certified copies of said offering will be furnished to the Clerk by plaintiff for use in the preparation of the transcript of appeal, and it is agreed that plaintiff may furnish such copies for such use.

It is agreed that the said statement is true and correct. It is further agreed that the Gulf Refining Com-

pany of Louisiana drilled the said wells at the dates mentioned, on the land in controversy, and produced and removed therefrom oil of the quantity and value shown by said statement.

112 Referring to the agreement in plaintiff's note of offerings as to documents offered in the Mason Case these agreements are made in open Court subject to the objection above noted.

It is admitted that the statement of James W. Neal, marked Plaintiff II, is a correct statement of the number of barrels of oil produced from the property, the market value of the oil so produced and of the distribution of the oil or its proceeds between the Gulf Refining Company of Louisiana and the various claimants in royalty interest in said land.

With reference to the statement pipage earnings, \$7625.50, appearing on said statement Plaintiff II, it is agreed that for the understanding and meaning of this term and its effect reference may be made to the testimony in the Mason case above referred to under a like agreement, that in making up transcript for appeal such testimony may be copied from the Mason case into the transcript of appeal in this case.

Plaintiff rests.

Filed Apr. 7, 1919.

113 P 2-(a)

No. 1166.

Special Attention.

Changes in the Method of Keeping Records and  
Accounts Relating to the Public Lands.

Instructions by the Commissioner of the General Land  
Office under Order by the Secretary of the Interior.  
Dated June 1, 1908.

Washington, D. C., June 10, 1908.

Approved:

FRED DENNETT,  
Commissioner.

Washington  
Government Printing Office.  
1908.

Order.

Department of the Interior,  
Washington, June 1, 1908.

On the recommendation of the Commissioner of the  
General Land Office, the following changes in the method  
of keeping records relating to the public lands will take  
effect July 1, 1908:

1. Only one series of numbers will be maintained at each district land office for all classes of entries, purchases, selections, locations, etc., of the public lands.
2. The initial declaration, application, or other paper required in any entry, purchase, selection, location, etc., will be numbered at the time and in the order in which it is presented at the district land office, without regard to its subsequent allowance or rejection. All



intermediate and final papers required to be filed or issued in connection therewith will be given the same number as the initial paper.

3. An alphabetical index of all declarants, applicants, entrymen, purchasers, selectors, locators, etc., will be maintained at the district land office where their initial papers are presented.

4. An alphabetical index of all declarants, applicants, entrymen, purchasers, selectors, locators, etc., will be maintained in the General Land Office.

5. A uniform receipt blank will be adopted for the use of receivers of public moneys. These blanks will be serially numbered, with one series of numbers for all receivers, before coming into their hands. Receivers will use only the blanks furnished them, and will be held strictly accountable for the disposition of each blank.

114 6. Receivers will issue receipts for all moneys received by them at the time the moneys are tendered.

7. A press copy of each receipt issued must be made before the receipt is delivered.

Detailed instructions in connection with the foregoing will be issued in due course by the Commissioner of the General Land Office.

JAMES RUDOLPH GARFIELD,  
Secretary.

P-2 (c).

### Receipts.

23. Receivers of public moneys will use but the one form of Receipt Blank (4-131, new form) for all moneys collectible by them, and for all certificates of deposit on account of surveys, military bounty land warrants, certificates of location, etc., which, under any act of Congress, may be received as cash in payment for lands. When the warrants or certificates of location are not tendered as cash, you will issue receipt only for the fees paid in connection with the "locating" thereof. The various forms of Receipt Blanks heretofore in use, in the shape of separate blanks or embodied in the homestead application or other papers, will be discontinued.

24. Receivers of public moneys may accept only cash or currency. United States Postal Money Orders, however, may be received and accounted for as cash when they are made payable to the order of receivers of public moneys by the postoffice where they are issued and drawn on the postoffice where the receiver is located. Receivers must not accept, or issue receipts for, money tendered in any other form.

25. Receivers must issue receipts for the full amount of money tendered and retained at the time the money is tendered.

26. Any amount received in excess of legal requirements, if determined before receipt issues, must be immediately returned with the receipt which issues for the amount retained. If determined after receipt issues and before it is applied (earned) and deposited to the credit of the Treasurer of the United States, it should be returned in the manner hereinafter indicated for the return of moneys for which receipts have issued.

27. Receivers of public moneys must not have any money in their custody or control, beyond the day of its receipt, for which receipts have not issued.

28. The issuance of a receipt by a receiver of public moneys does not mean that the application, entry, proof, etc., in connection with which it is issued, is allowed or approved, or will be allowed or approved. It merely means that he has received the money and that it is in his custody or control until it is applied or returned.

29. If, after a receipt has been issued, the application, entry, proof, etc., with which the money was tendered can not be allowed or approved, or the transcripts of records, plats, etc., can not be made, you will notify the party to whom the receipt issued, and with this notification, the money tendered must be returned in the following way:

By your official check as receiver of public moneys, with notation on the check showing the number of the receipt which you issued for the money which you return.

30. It is not necessary that the receipt issued by you be surrendered before you return the money nor after you return the money. Your possession of a receipt issued by you will not be accepted as evidence that you have returned the money. The following will be accepted, and relieve you of further accountability thereof:

Your official check as receiver of public moneys, with notation thereon of your receipt number.

31. If, after a receipt has issued, the application, entry, proof, etc., can be allowed or approved, no further receipt for the money paid in connection therewith will be issued; but notice

of such allowance or approval will be given the person to whom the receipt issued. Such notations as "Application not yet allowed" or "Certificate not yet issued" are not necessary on the receipts nor the abstracts.

32. A press copy of each receipt issued must be made before the receipt is delivered.

33. All receipts must be press-copied in the books provided for that purpose until further advised. Leave as much blank space, at the top and left edge of the sheet, as possible.

34. Press copies of receipts must always be kept together, in consecutive, numerical order, by receipt numbers.

35. A record of each receipt issued must be made, in consecutive, numerical order, in the "Daily Record of Receipts" before the receipt is delivered.

36. Receipts must be issued in consecutive, numerical order. Each receiver must use the lowest numbered receipt furnished him, first.

37. Any receipt blank that is mutilated or spoiled in any manner should be marked plainly across its face "Cancelled" and be placed in proper numerical order with the press copies. The numbers of all cancelled receipts must be noted in their proper consecutive order in the "Daily Record of Receipts," with a notation on the same line, "Cancelled."

38. At the end of each month, when ready to transmit the monthly returns and accounts, cut out from the press-copy book copies of all receipts issued during

the month and forward them with the "Schedule of Receipts Issued."

39. Receivers must account for the total amount of money received by them, as shown by the total of the receipts issued, in one of the following ways:

(a) By depositing it to the credit of the Treasurer of the United States.

(b) By returning it to the person to whom receipt issued.

(c) By having it deposited in the designated depositories to their official credit as "receiver of public moneys"; or,

(d) By having it on hand in their offices.

40. Receipts must always show the serial number of the application, entry, etc., in connection with which they are issued.

41. There will, of course, be no serial number on receipts issued for moneys received for transcripts of records, plats, sales of Government property, etc.

42. All application, entry, proof, or other papers with which money is required to be tendered must bear a notation of the number of the receipt which issued for the money. This receipt-number notation should appear immediately below the serial number of the application, entry, proof, certificate, etc., as follows:

"U. S. Land Office.....No. 056.

Receipt No. 17856."

43. Receipts must also show a full description of the land involved, except such as are issued  
 116 for contest fees, transcripts of records, plats, etc., and selection lists, mineral entries, etc., which require a metes-and-bounds or other lengthy description of the land. In such cases the serial number and the survey number, if there be any, is sufficient.

44. A separate receipt is not necessary for any "excess" payments required. The excess payment can be noted on the same receipt that issues for the normal payment, provided it is paid at the same time. If an excess payment or additional payment is made subsequently, a separate receipt will then issue.

117 United States District Court, Western District of Louisiana.

United States of America ,  
 vs. No. 1166 In Equity.  
 Thomas M. Stockley.

To Honorable Rufus E. Foster, Judge:

I beg to make this report as master in chancery in the above suit.

This suit has already been considered by your Honor in passing, on the plea in bar tendered by defendant, pleading the statute of limitations of two years against the attack by the United States on the title claimed by defendant. The defendant contended in that plea that more than two years had elapsed since he had made his final proof and receive a final certificate. Your Honor disposed of that plea by overruling it and in so doing your Honor had to consider the character of the title claimed by defendant and characterized it as follows:

"I do not think Stockley had a complete equitable title, without which the plea in bar cannot be maintained. It is to be noted Stockley was tendered a surface patent which he declined. Under the withdrawal order that was all he was entitled to. The plea in bar will be overruled and the case will go to the master to be proceeded with in the usual course."

Counsel for defendant pressed in the trial before me the contention that the whole case is still open inasmuch as the entire evidence now in the case was not before your Honor on the plea in bar. Inasmuch as some additional evidence was heard before me bearing on the character of the title contended for, I will consider all contentions of plaintiff and defendant.

I find as follows:

Stockley made a settlement on the land in question, i. e., fractional SW $\frac{1}{4}$  of NE $\frac{1}{4}$  and fractional SE $\frac{1}{4}$  of Section 5; and fractional NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 8, all in Township 20, N. R. 16 west, containing 71.25 acres in Baton Rouge Louisiana land district, in 1897 and on November 13, 1905 he filed his homestead entry. On

118 December 15, 1908 the land was withdrawn from entry by Executive order of the President of the United States, with all other public lands in township 15 to 23, North Range 10 to 16 West, La. Meridian Natchitoches Land Office. This was done in order to conserve the public interests. The effect of this order was to place all public lands in the above townships and ranges in a petroleum preserve. Following this order and in interpretation thereof, the Secretary of Interior issued to the Register and Receiver the following instructions:

"Applications, selections, entries and proofs based upon selections, settlements, or rights initiated prior to the date of the withdrawal may be received by you and allowed

to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases, receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns Form 4-115".

The above withdrawal order had a proviso "subject to existing valid claims" and defendant contends that at this date, i. e., December 15, 1908, by the terms of the order the land entered by him is excluded from the operation of this order, his right to the land in question, *ad coelum ad infernam* was a vested right good against all the world and that the Government itself could not deprive him of it. At this date the only steps already taken by Stockley was to settle on the land and make his entry—he had not yet proceeded to make his final proof. At this time, the government from information received, had concluded that all land in the above township and ranges were mineral lands and that in order to conserve the public interests, it declared all these lands a mineral preserve taken out of the category of private appropriations except as to surface rights under act of Congress, July 14, 1914. The homestead law, 2302 R. S. contemplates this in providing:—"nor shall any mineral lands be liable to entry and settlement under this provision". On its face does not the Executive Order and action of the United States Government in classifying these lands as mineral by putting them in a petroleum preserve, operate as a presumption which the defendant must overcome  
 119 —in other words, is he not bound to show that the opinion and action of the Government was



wrong in classifying these lands as mineral? When he comes to make his final proof must he not satisfy the Government, i. e., the Register, Receiver, Commissioner of Land Office, and Secretary of the Interior that the lands in question were non-mineral lands?

This effort was made by Stockley but he did not succeed in convincing the governmental authorities that the land was non-mineral. Altho defendant had settled on this land some years before, the record does not show that he made his final entry until 1905. The circumstances of this first entry are related by the witness Bell in the contest which subsequently developed respecting this land before the Government officials. In 1905 Bell, who was in the employment of an oil company prospecting in the Stockley neighborhood for oil lands, stopped several times at Stockleys and assisted him in the filing of his homestead. At this date Bell had bought several thousand acres of land in sight of Stockleys for his oil company and told Stockley about the purchase. Subsequently Stockley made his proof called final before the Register and got a receipt for commissions and testimony which he paid the Receiver on January 16, 1909.

On this so called final receipt the defendant takes his stand, averring his right to a vested right and such a valid claim as is referred to in the Executive order and excluded from the operation of the Executive order, and that he is entitled to a patent in fee simple to the land and that the Government has no legal right to withhold it from him.

After January 16, 1909 a contest of this entry was ordered by the Commissioner of Government Land Office but it was dismissed by the Register and Receiver and no steps taken. Defendant's counsel contends this ended the matter and the subsequent actions referred to herein, of the Commissioner and Secretary of Interior were ultra vires and not bearing on defendant. After the dismissal

of the contest by the Register and Receiver, the Commissioner of the Government Land Office ordered the case up, reviewed it and reversed the finding of the Register and Receiver. Stockley appealed from this decision of the Commissioner to the Commissioner to the Secretary of the Interior, who after considering the whole case, affirmed the Commissioner's ruling and cancelled the entry—Stockley having refused a surface patent under act of Congress, July 17, 1914.

In these holdings of the Commissioner and Secretary of Interior, they found as a fact that:—"the investigations made and evidence submitted, convince the department that the lands are and were at date of final proof, valuable for their deposits of oil and gas and that consequently this department is under the circumstances, without authority to issue final certificate and patent for said land including said mineral deposits".

Denying, as above stated, that the Commissioner and Secretary had any authority *ex officio* to initiate inquiries or to proceed after the action of the Receiver and Register dismissing the contest of the entry from which no appeal was taken, defendant further assails their findings of fact as to the mineral character *vel non* of the land in January 1909 as being null and void for the reason that there was no evidence before them tending to prove this fact and therefore the whole question even as to such finding of fact, is still open for the Court to determine.

It is necessary at this stage to examine these contentions. It seems to be settled that the Commissioner and Secretary had the right to order up the record from the Register and Receiver without the finality of appeal and they can do this *ex officio*.

Section 453 R. S. provides:

"Sec. 453 R. S.: The Commissioner of the General Land Office shall perform under the direction of the Se-

cretary of the Interior all executive duties appertaining to the surveying and sale of public lands of the United States, or in any wise respecting such public lands.....

Sec. 441 R. S.: The Secretary of the Interior charged with the supervision of public business relating to the following subjects:

Second: The public lands, including mines."

41 L. D. 295 and other prior law decisions hold when the interest of the government is concerned, the Commissioner and Secretary may review the findings of the Register and Receiver in absence of appeals and that the decision of the Register and Receiver were mere recommendations and not judgments.

121

In *Knight vs U. S. Land Association*, 142 U. S., 161 the United States Supreme Court maintained this right of the Secretary, even when no appeal was taken, stating the law as follows:

"The phrase 'under the direction of the Secretary of the Interior', as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the land department of which he is head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the governing by reason of the laws of congress or under treaty stipulations, respecting the public domain, the Secretary of the Interior is the supervising agent of the Government to do justice to all claimants and preserve the rights of the people of the United States. As was said by the Secretary of the Interior on application for the recall and cancellation of the patent in this pueblo case (5 Land Dec. 494): 'The statutes in

placing the whole business of the department under the supervision of the Secretary invests him with authority to review, reverse, amend, annul, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the secretary may adopt. When proceedings affecting titles to land are before the department, the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. The rules prescribed are designed to facilitate the department in the despatch of business, not to defeat the supervision of the Secretary. For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney-General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated which it would be immediately his duty to ask the Attorney-General to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him and therefore he was without authority in the matter."

This decision has been followed in 245 U. S. 225, 228, 228 U. S. 42, and others. I think therefore the action of

122 the Commissioner, Government Land Office and the Secretary of Interior in reviewing the findings of the Register and Receiver is sustained by law even tho there was no formal appeal from the findings of the Register and Receiver.

Next as to the finding of the Commissioner and Secretary of Interior from the evidence before them that the fact was proven that the land was chiefly valuable for minerals and therefore not open to agricultural homestead except as to the surface thereof. I am of the opinion that this finding of fact is not open to inquiry under the evidence shown in the Record, but that this finding of fact is binding on the Court. It is true that the Courts will always reserve to themselves the right to look into the evidence and determine whether or not the action of the commissioner or Secretary was arbitrary, and whether they decided a question of fact without any evidence to sustain it, but the function of the Courts in such a situation is not to sit in review of the evidence as if it were on appeal, neither will they weigh with nice scales the weight of this testimony, but they will only look at it to see if there was no evidence to support the findings; they will not put their judgment, as a rule, against the judgment of the administrative officers. Even tho the evidence might impress a trial Court as an original proposition in a different way and leads to a different conclusion by it than the Commissioner or Secretary found, the Court in these sort of matters leans to respecting the findings in questions of fact by the Commissioner and Secretary.

In the evidence considered by the Commissioner and Secretary were reports from Director Smith, the evidence of Gray, Webster who says,—“In judging the question of oil lands he would value topographical conditions somewhat, and that geological formations were a good guide.” and also Bell and others bearing on the status and char-

acter of this land as potentially mineral as far back as 1905. Bell at that period was actually buying land lying next door to Stockley for his employes, an Oil Company, a fact which indicates that in the mind of oil people a judgment had been formed which harmonized with the judgment of the Government which led to the **withdrawal** order in 1908 of this land on the ground that all  
 123 this so reserved (including that claimed by defendant) were chiefly valuable for its deposits of oil and gas, and led to the conclusion later on of the Commissioner,—“that at or prior to the time of making final proof, claimant knew the land was chiefly valuable for its oil and gas and its comparative location and surface indications were such as to put him on notice as an ordinarily prudent man that the land contained deposits of oil and gas and was chiefly valuable therefor”. The claimant evidently believed this strongly for after filing his so called final receipt, he began soliciting oil men to take a lease from him prior to March 7, 1910. In March 17, 1910, he succeeded in leasing it to the Gulf Refining Company for \$5,700.00. The probability is this idea had its beginning at the time in 1905 when Bell was visiting his section noting the oil development and buying oil lands. This idea in Stockley’s mind was well founded as he subsequently succeeded in.....in obtaining \$5,700.00 for a lease on the property and large quantities of oil have been taken from it. Under all these circumstances it would seem that the indications and prospects as to oil and gas, were an existence prior to 1908, which justified the government in withdrawing these lands from private appropriations by Executive order.

The above leads me to conclude that the Commissioner and Secretary had evidence before them as to this fact of mineral character and that their findings on the facts in dispute cannot be classed as arbitrary. In this inquiry before the Departments, the conclusion having been reach-

ed that the land was valuable for mineral deposits and defendant knowing it, or having good reason to believe it, it was the manifest duty of the Department to withhold the patent in fee to the land.

The above considerations have been indulged in from the angle of Stockley's contention that he had a vested right as against the Government as to this land prior to the issuance of a patent. In law does an entryman as against the Government possess a vested right at any stage of his acquisition of title prior to issuance of a Patent? Your Honor has already held that defendant had a valid claim to a homestead but no claim to any mineral rights. Defendant claims that the fact

124 of prior residence and the entry under the homestead act (which by terms of the act itself excludes any entry of mineral lands) starts a train of right in the settler to perfect his claim into a final receipt and patent and that this is a vested right even as against the real owner of the property, i. e., the United States and that this real owner, when once the train starts, cannot restrict or deny his right, no matter what circumstances may occur in the interim between his initial step and the final step requiring the Government to withdraw pro bono publico the land or any interest in the land from private acquisition, and that when it attempts to exercise the right (as in the instant case) under the guise of conserving the hidden mineral wealth from public uses, that it should be compelled to prove as against the claimant not only that the land was considered by the Government as valuable chiefly for minerals (a fact demonstrated shortly after the so called final receipt by the actual outpouring of the oil on the surface from wells drilled) but the obligation is on the Government to prove the actual discovery on the land and knowledge thereon in the settler at the time of the so called final receipt. Such a contention it seems to me would defeat the very object of the withdrawal,

which is to prevent a private citizen from preempting the minerals.

The withdrawal of this land on the ground of imminent ocular proof of their value as mineral lands was wisely exercised by the Government (as shown by ocular demonstration shortly after the so called final receipt. This withdrawal by the President and the action of the Secretary in ordering all homesteads up to be held in suspense, was amply justified as shown by the event and saved the minerals to the public. If this withdrawal had been delayed or withheld until the hidden treasure had been laid bare on the surface, in the meantime allowing private claimant to proceed and obtain patents, it would then have been too late to carry out the object of the Government. In such matters the Government is not tethered in such close bonds but may move more freely—to hold otherwise under such circumstances, private right would get the better of public right. As stated in *Diamond Cole and Coke Co. vs U. S.* 233, p. 236:

125           “There is no fixed rules that lands become valuable for coal only thru its actual discovery within their boundaries. On the contrary they may and often do become so thru adjacent discoveries and other surrounding and external conditions”.

If this is true of coal a fortiori, it should apply to oil and gas a must [much] more volatile mineral.

Right next door to Stockleys in 1905 conditions were in existence and open to common observation such as appealed to practical oil men who were investing in lands for oil and to the knowledge of Stockley; with the help of one of these oil men Stockley himself acted upon his somewhat dormant right to make his first entry. This entry and the purchase by Bell, the representative of oil interests of adjacent lands was made at the same time.



Exhibit C upon the trial of the contest was in evidence and was treated as evidence by consent of counsel to verify witnesses and for the purpose of helping in determination of the case. This Bulletin discussed the limits and history of the Caddo Oil and Gas Field which embraced the land in this suit.

After Stockley's settlement and prior to his so called final receipt (which issued contrary to the legal instructions of the Commissioner of Government Land Office and of the Secretary of Interior) his right was not a vested one, but was inchoate and continued to be till patented 227 U. S. 376 *Watkins vs Producers Oil Co.*, Fed. Rep. 669, U. S. vs Braddock. 240 U. S. 142 *Banning Co. vs People of the State of California*.

"*Banning vs People of State of California*:

"Constitutional law—impairing contracts obligations—sale of state lands. Compliance with the provisions of Cal. Act of April 27, 1863, governing the sale of tide lands of the state, by making an application for their purchase, taking the required oath, and expending money for a survey, cannot be said to consummate, without the payment of some instalment of the purchase price, a binding contract between the purchaser and the State, protected by U. S. Const, Art. 1 No. 10, against impairment by subsequent legislation, notwithstanding a subsequent judgment of a state Court in his favor, rendered in a contest over conflicting applications."

However the above may be, defendant's contentions were legally considered on the facts by the Departmental officers and they found the land at the time of Stockley's filing of his so called final receipt chiefly valuable for minerals and that Stockley believed this also and that he had no right under existing laws to a fee simple, but simply to a surface patent.

That this finding of fact by the department against Stockley as to the character of this land is conclusive on him as has often been decided and stated as follows: U. S. Supreme Court Reports, Vol. 10, Page 245.

"The land department must consider and pass on the qualifications of the applicant, his acts, the nature of the land and whether it is of the class open to sale."

Again 32 C. Y. Page 1020, Par. 15.

"A decision rendered by the officers of the land department upon a question of fact is conclusive and not subject to be reversed by the Courts in the absence of a showing that such decision was rendered in consequence of fraud or mistake, other than an error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of the evidence upon which the finding in question could be made."

This finding of fact, for reasons above given, I think binding on the Court. 175 Fed. Rep. 514, Emmon vs U. S.

I therefore find that Stockley's claim to a homestead in fee simple to the land in question was not a valid claim and that the title thereto is in the United States, Stockley and the other defendants having no right nor title thereto.

I find that wells have been drilled on said premises and large quantities of oil extracted. I find that up to December 31, 1917, 84496.33 barrels of oil were produced by defendant (Gulf Ref. Co.) valued at \$62581.85 and that royalties were received as follows:

W. K. Henderson, Jr.	\$3037.72
I. J. Stockley	3021.93
Natalie Oil Company	1459.18

I find the net amount received by the Gulf Refining Company after paying the above royalties to be \$55063.02.

I therefore recommend a decree in favor of the United States, plaintiff herein, against defendants, cancelling the entry and final receipt claimed by Stockley and decreeing the land to be the property of the United States, as prayed for in Bill.

I further recommend that there by judgment in favor of the United States Government, Plaintiff, against Gulf Refining Co., of La., in the sum of \$55063.02  
 127 with interest at ..... per cent until paid and against the Gulf Refining Company of La., and W. K. Henderson Jr., in solido for \$3037.72 with interest as above, and against Gulf Refining Co., of La., and T. J. Stockley in solido for \$3021.93 with interest as above and against the Gulf Refining Co., of La., and the Natalie Oil Co., in solido for \$1459.18 with interest as above.

I further recommend the rights of the plaintiff, the United States be reserved against all defendants as respects oil taken from the land since December 31, 1917.

Respectfully submitted,

E. H. RANDOLPH,  
 Master in Chancery.

Apr. 7/19.

Indorsed: Opinion of master in Chancery. Filed Apr. 7, 1919.

128      United States District Court in and for the Western of Louisiana.

United States of America

vs.

No. 1166 In Equity

Thomas J. Stockley.

Now come the defendants in the above entitled and numbered cause and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the seventh day of April, 1919, and for the cause of exception shows:

1.

That the Master has stated and certified that the land in controversy was withdrawn from entry on December 15th, 1908; whereas he should have reported and certified that the land in controversy was not so withdrawn

2.

That the Master has in said report stated and certified that the land in controversy was on December 15th, 1908, public land and as such withdrawn from entry by executive order of said date; whereas the Master should have reported and certified that on said date the land was embraced in a valid homestead entry and, consequently, expressly excepted from the effect of the withdrawal by the terms of the executive order itself, withdrawing the lands subject to existing valid claims.

3.

That the Master has reported and certified that on December 15th, 1908, the government had concluded that all land in the above townships and ranges were mineral

lands; whereas he should have reported and certified that the withdrawal order was entirely irrelevant and that it did not proceed upon any conclusion of the government that all such lands were mineral lands.

## 4.

That the said Master has reported and certified that Stockley made an effort to convince the government that the lands in question were not mineral lands at the time of his final proof but did not so succeed; whereas the Master should have reported and certified that Stock-  
 129 ley filed a non-mineral affidavit in accordance with law, which was duly accepted and upon which final receipt was issued, and that said cause was there-  
 after clear listed and closed.

## 5.

The Master has reported and certified that Stockley made his entry under circumstances indicating that he thought the land at that time oil land; whereas he should have reported and certified that Stockley made his entry in absolute good faith, ignorant of the oil value of the land and without any idea that the land contained any mineral; and that the said Master erred in ignoring the conclusion of all of the officials of the Land Office, concurring in their opinion that Stockley was in absolute good faith in the premises.

## 6.

The Master has reported and certified that the Commissioner of the General Land Office and the Secretary of the Interior had the right to order up the record in which the contest of Stockley's entry was decided against the

United States by the Register and Receiver, without the formality of appeal; whereas he should have reported and certified that the action of the Commissioner of the General Land Office, in reversing the decision of the Register and Receiver dismissing the Government's contest, was arbitrary, unlawful and void.

## 7.

The Master has reported and certified that the findings of the Commissioner of the General Land Office and the Secretary of the Interior are not open to inquiry under the evidence shown in the record, but that such findings of fact are binding upon the Court; whereas he should have reported and certified that the findings of fact of the Commissioner of the General Land Office and of the Secretary of the Interior, upon which they predicated their order cancelling Stockley's entry were void as being arbitrary and without evidence to support them; and that the question of whether there was evidence to sustain the findings of fact is a question of law for the Court, and which necessarily involves its examinations of  
 130 such record.

## 8.

That the Master has reported and certified that there was evidence to sustain the findings of the Commissioner and the Secretary of the Interior; whereas he should have reported and certified that there was no substantial evidence to sustain such findings and that the same were void as being arbitrary and unlawful.

## 9.

That the Master has reported and certified that there was evidence in the record to show that "in the mind of

oil people a judgment had been formed that the land was potentially mineral before final proof; whereas such finding is without any warrant in the record of this case and the Master was wholly unjustified on so stating.

## 10.

That the Master has reported and certified that prior to his final proof the land was chiefly valuable for its oil and gas and that the circumstances were such as to put Stockley on notice as an ordinarily prudent man that the land contained deposits of oil and gas and was chiefly valuable therefor; whereas the Master should have reported and certified that there was no such evidence in the record in the case in the Land Department or before this Court.

## 11.

The Master intimates in his report that Stockley began soliciting oil men to take a lease from him immediately after obtaining his final receipt; whereas there is absolutely no evidence of this character in the record.

## 12.

The Master has intimated in his report that Stockley had an idea in 1905 that the land might be mineral in character from the fact that an agent of an oil company was then visiting the section noting oil development; whereas there is utterly no evidence of that character in the record and the Master's finding to that effect is wholly unwarranted and without foundation.

## 13.

That the Master intimates in his report that there were indications prior to 1908 that the land in controversy con-

tained oil and gas; whereas he should have made no such intimation for the reason that there is absolutely nothing in the record to justify such inference.

## 14.

The Master has reported and certified that the land was, prior to the date of final proof, valuable for mineral deposits, to the knowledge of Stockley, or under circumstances such as to give him good reason to believe it, and that it was the manifest duty of the Department to withhold patent to the land; whereas he should have reported and certified that Stockley neither knew nor had reason to know of the mineral character of the land; that there was no evidence to support such findings and that the action of the Department in withholding the patent was arbitrary, unlawful and void.

## 15.

The Master has reported and certified that the land in controversy was mineral land under the purview of the law reserving lands valuable for minerals from sale; whereas he should have reported and certified that the land in controversy was not at the date of final proof mineral land, and was subject to homestead entry and patent thereunder.

## 16.

The Master has reported and certified that the fact of Stockley's residence and entry of the land in controversy, prior to December 15th, 1908, did not operate to exclude the said land from the effect of said withdrawal; whereas he should have reported and certified that Stockley at that time had a vested right which could not be impaired



by executive withdrawal; and further that his land by reason of the rights acquired under his homestead entry was expressly and in terms excepted from the effect of the withdrawal.

132

17.

The Master has reported and certified that the burden does not rest upon the Government to prove the mineral character of the land to defeat a homestead entry; whereas he should have reported and certified that upon the filing of non-mineral affidavit it is incumbent upon the Government to prove as a fact existing at such date the actual mineral bearing character of the property and that this must be determined by what is known as a fact to exist at the time.

18.

The Master has reported and certified that the executive order of withdrawal preceding the date of final proof relieved the Government from the necessity of proving the mineral character of the land in order to defeat Stockley's homestead entry; whereas he should have reported and certified that the said withdrawal order, excepting existing valid claims, it was incumbent upon the officials of the Land Department in order to defeat Stockley's right to a patent, to prove affirmatively the actual mineral character of the land at the date of final proof, and that in the absence of proof by means of testimony entitled to respect that such lands were actually known to be valuable for minerals at the date of final proof, any action upon the part of the officials of the Land Office cancelling the entry or refusing to issue patent, was arbitrary, null and void.

## 19.

The Master has reported and certified that the mineral character of land for the purpose of defeating the perfection of a homestead entry could be established otherwise than through proof of the actual existence of minerals in the property; whereas he should have reported and certified that an entry could not be invalidated by proof of anything less than the known mineral character of the property at the date of final proof, to be ascertained by the actual discovery of minerals thereon.

## 20.

That the Master has reported and certified that in 1905 conditions were in existence and open to common observation such as appealed to practical oil men as  
133 to indicate the existence of oil in the neighborhood; whereas such finding upon the part of the Master is wholly gratuitous and without any evidence whatever to support it.

## 21.

The Master has reported and certified that Stockley had no vested right prior to his final receipt whereas he should have reported and certified that Stockley, not only had a vested right, but one which was expressly recognized in the executive order of December 15th, 1908, and excepted from its terms.

## 22.

The Master has reported and certified that Stockley's final receipt issued contrary to the legal instructions of the Commissioner of the General Land Office and of the

Secretary of the Interior; whereas he should have reported and certified that Stockley's final receipt issued in accordance with law and not in violation of any legal instructions of any of the officials of the Land Department.

## 23.

The Master has reported and certified that Stockley's contentions were legally considered on the facts by the departmental officers and they found the land at the time of Stockley's filing of his final receipt chiefly valuable for minerals and that Stockley believed this also; whereas the Master should have reported and certified that there was no legal consideration of the facts by the Government officials, that the attempted consideration by the Land Office was illegal and without authority of law; that the findings of fact by the Commissioner and by the Secretary were arbitrary and based upon no evidence and furthermore that neither the Secretary nor the Commissioner of the General Land Office ever held that the land was chiefly valuable for minerals at the date of final receipt or that Stockley believed such to be a fact.

134

## 24.

The Master has reported and certified that Stockley's homestead claim was not a valid claim at the date of the executive order of December 15th, 1908; whereas he should have reported and certified that it was such an existing valid claim, expressly excepted from the effects of the withdrawal.

## 25.

That the Master has reported and certified that title to the land is in the United States; whereas he should have reported and certified that Stockley obtained a final re-

ceipt under his homestead entry of the said property on January 15th, 1909, which under the confirmatory provisions of the act of March 2nd, 1891, entitled him absolutely to a patent prior to the date of the institution of the contest by the Government; that Stockley is the owner of the property; and that all proceedings instituted by the Government contesting his title in the departments were without any authority of law; and that Stockley is now entitled under the law to a patent to said land and therefore is the owner thereof.

## 26.

The Master has reported and recommended that there should be decree cancelling Stockley's entry and final receipt and decreeing the land to be the property of the United States; whereas he should have reported and recommended a decree rejecting the demands of the plaintiff.

## 27.

The Master has reported and recommended that there be judgment in favor of the plaintiff and against the defendants for the value of the oil taken from the property; whereas he should have reported and recommended the rejection of plaintiff's demands.

Wherefore defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed: Exception of defendants to master's report.  
Filed Apr. 26, 1919.

## 135      IN RE GOVERNMENT OIL SUITS.

## Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchases it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his report. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kiddor, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines,

which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908 and later by proclamations of President Taft in 1910. The land lies adjacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in the oil until reduced to possession. I can not agree with this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the

integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good  
137 faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur Oil Company because the well was no profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly et als, it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166 is the only case presenting any difficulty but considering the views expressed in overruling the preliminary

objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestion of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15/19.

(Opinion). Filed Jul. 17, 1919.

---

138      In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America,  
vs.      No. 1166, In Equity.  
Thomas J. Stockley, Robert L. Stringfellow, J. G. Hes-  
ter, W. K. Henderson, Junior, Natalie Oil Company,  
Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:



II. That the land described in the bill of complaint, namely, Lot Five (5) of Section Five (5), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing twenty-nine and eighty-seven hundredths (29.87) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States,

III. That the lease of date March 17, 1910, made by Thomas J. Stockley to the Gulf Refining Company of Louisiana, recorded in Book 59, page 209 of the Conveyance Records of the Parish of Caddo, State of Louisiana, be and the same is hereby declared null, void and held for naught, and the said lease shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of said land shall be restored to plaintiff.

139 V. That the defendants, namely, Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Junior, Natalie Oil Company, and the Gulf Refining Company of Louisiana (J. G. Hester, one of the defendants, having filed a disclaimer and not having, or asserting, any interest herein), shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and

from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or other minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Fifty-Five Thousand and Sixty-three and 02/100 (\$55,063.02) Dollars together with five per cent per annum interest thereon from April 7, 1919, until paid.

VII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana, and W. K. Henderson, Junior, in solido, and the said defendants are hereby condemned and order to pay to plaintiff, the full sum of Three Thousand and Thirty-seven and 72/100 (\$3037.72) Dollars, together with five per cent per annum interest thereon from April 7, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and Thomas J. Stocklev in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thousand and Twenty-one and 93/100 (\$3,021.93) Dollars, together with five per cent per annum interest thereon from April 7, 1919, until paid.

140 IX. That the United States of America do have and recover of and from the Gulf Refining

Company of Louisiana and the Natalie Oil Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand, Four Hundred and Fifty-nine and 18/100 (\$1,459.18) Dollars, together with five per cent per annum interest thereon from April 7, 1919, until paid.

X. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XI. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XII. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this

Court. The said receiver shall, within 90 days from the date of this decree, furnish bond with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Ten Thousand (\$10,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,  
United States Judge.

Indorsed:—Decree. Filed August 12, 1919.

142 In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Plaintiff,

vs.

No. 1166 In Equity.

Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Junior, Natalie Oil Company, Gulf Refining Company of Louisiana, Defendants.

To the Honorable Judges of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The above named defendants, Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana, feeling themselves aggrieved by the decree made and entered in this cause on the 13th day of August, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which has been filed, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for Defendants.

Let the foregoing petition be granted and the appeal allowed, which shall operate as a supersedeas upon the defendants giving bond conditioned as required by law, in the sum of Eighty-five Thousand (\$85,000.00) Dollars.

United States District Judge.

Indorsed:—Petition and Order for Appeal. Filed Sep. 23, 1919.

United States of America, Plaintiff,  
vs. No. 1166 In Equity  
Thomas J. Stockley, et al., Defendants.

First,

The Court erred in overruling the plea in bar set up by defendants under which they claim the benefit of the confirmatory provisions of section Seven of the Act of March 3rd, 1891, as rendering null and void proceedings in the Interior Department, under a contest instituted after the lapse of more than two years from the date of

the issuance to Stockley of the receiver's receipt upon final entry of the tract here in controversy under the homestead laws, there having been no prior or pending contest against the entry.

#### Second.

The Court erred in holding that, despite the provisions of Section Seven of the Act of Congress of March 3rd, 1891, the Interior Department had power, right, jurisdiction or authority to entertain or pass upon the contest of Stockley's homestead, brought and filed more than two years after the issuance of the receipt upon his final entry of the tract of land here in controversy under the homestead laws.

#### Third.

The Court erred in holding that after the lapse of two years from the date of the issuance of its receiver's receipt upon the final entry by Stockley of the tract of land here in controversy under the homestead laws, without there being pending then any contest or protest against the validity of such entry, such validity  
 145      could be any manner called in question by the Interior Department.

#### Fourth.

The Court erred in holding that at the expiration of two years from the date of the issuance of the receiver's receipt upon his final entry under the homestead laws, there being no pending contest or protest against the validity of such entry, Stockley, the entryman, was not the owner of the tract so entered (being the property here in controversy) as against the United States.

## Fifth.

The Court erred in holding that lands embraced in a homestead entry can, while the entry stands and the law is being complied with, be withdrawn by the President from completion of the entry.

## Sixth.

The Court erred in holding that the effect of the executive order of December 15th, 1908, withdrawing public lands in the township wherein the land in controversy is located, from settlement and entry or other form of appropriation "subject to existing valid claims", had any effect as against Stockley's right to perfect his homestead entry of the property in controversy on which he was at that time residing under a regular and legal homestead entry on which he had completed the statutory term of resident and cultivation.

## Seventh.

The Court erred in holding that the said executive order of December 15th, 1908, operated to nullify or suspend the operation of the Act of Congress of March 3rd, 1891, so that the expiration of two years from the issuance to Stockley of the receiver's receipt upon his final entry under the homestead laws did not entitle him to a patent as a matter of right and divest the Interior Department of power and jurisdiction thereafter to entertain a contest against his said entry.

## Eighth.

The Court in holding that proof of the mineral character of land embraced in a homestead entry prevents the



running of the statute embraced in Section Seven of the Act of Congress of March 3rd, 1891, under which the lapse of two years from the issuance of the receiver's receipt upon final entry without there being any pending contest or protest against its validity entitles the  
 146 entryman to a patent as a matter of right, divest the Interior Department of all power to entertain any contest thereof and prevents the validity thereof being called into question except in the same manner in which a patent may be attacked.

#### Ninth.

The Court erred in holding that the discovery of oil on the property embraced in the homestead entry within two years after the issuance of the receiver's receipt on final entry had the effect of preventing the operation of the confirmatory provision of Section Seven of the Act of Congress of March 3rd, 1891, though no contest or protest against the validity of such entry was pending after the lapse of two years from the date of the issuance of such receipt.

#### Tenth.

The Court erred in holding that the property in controversy was mineral land at the date of Stockley's final proof and non-mineral affidavit.

#### Eleventh.

The Court erred in holding that any effect could be given to the action of the Secretary of the Interior and of the Commissioner of the General Land Office in reversing the concurrent decision of the Register and Receiver of the local land office sustaining Stockley's entry

as against the contest filed by the United States, without any appeal from such decision.

Twelfth.

The Court erred in holding that there was any evidence adduced before the Commissioner of the General Land Office or the Secretary of the Interior that the land in controversy was mineral land at the date of Stockley's final proof and non-mineral affidavit.

Thirteenth.

The Court erred in holding that, under the laws of the United States, land is mineral in character as oil or gas lands, when at the date involved no oil or gas had been found thereon or on adjoining land.

147

Fourteenth.

The Court erred in holding that a decision of the Secretary of the Interior purporting to cancel a homestead entry on the ground that the land is and was at the date of final proof valuable for its deposits of oil or gas, can be given any legal force or effect when the record before the Secretary fails to show any evidence that any oil or gas had been found or was known to exist in said land at such date and when all the evidence showed that no prudent oil operator would at that date have expended money to drill on such land.

Fifteenth.

That the Court erred in holding Stockley's claim to the land to be null and void and the title to be in the United States.

## Sixteenth.

That the Court erred in rendering a decree for the plaintiff.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. A. THIGPEN,  
S. L. HEROLD,  
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Sept. 22, 1919.

---

## 148 SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1166 In Equity.

Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, Gulf Refining Company of Louisiana, Defendants.

Know all men by these presents, that we, Thomas J. Stockley, Robert J. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana, as principal, and the American Surety Company of N. Y., as surety, are held and firmly bound unto

and in favor of the United States of America, appellee, in the above cause, in the full sum of Eighty-five Thousand (\$85,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 23rd day of September, 1919.

The condition of the above obligation is such that,

Whereas, on the 13th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana, were defendants, numbered on the Equity Docket 1166, a decree was rendered and signed and filed against the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana, and the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit.

Now if the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea

good, then the above obligation to be void; otherwise to remain in full force and effect.

THOMAS J. STOCKLEY,  
By S. L. HEROLD.  
ROBERT L. STRINGFELLOW,  
By S. L. HEROLD.  
W. K. HENDERSON, JR.,  
By S. L. HEROLD.  
NATALIE OIL COMPANY,  
By S. L. HEROLD.  
GULF REFINING COMPANY OF  
LOUISIANA,  
By S. L. HEROLD.  
AMERICAN SURETY COMPANY  
OF N. Y.,  
By R. L. GOFFNEY, Atty.-in-fact.

(Seal)

Approved:

This 23rd day of September, 1919.

RUFUS E. FOSTER,  
United States District Judge.

Indorsed:—Supersedeas Bond. Filed, Sept. 23, 1919.

150 In the District Court of the United States for  
the Western District of Louisiana

United States of America,

vs.

No. 1166.

Thomas J. Stockley, et al.

The above numbered and entitled cause coming on to be heard on the application of the parties for settlement of the record on appeal;

And it appearing to the Court that there is a conflict between the precipe filed by defendants and the precipe filed by plaintiff in said cause with respect to the contents of the record on appeal;

And it further appearing to the Court that the evidence in said cause consists of documents and exhibits, which require interpretation by the Court and which by reason of their character cannot be condensed without detracting from their effectiveness;

And it further appearing to the Court that said documents and exhibits will not make a voluminous record;

And counsel for the respective parties having consented thereto;

It is ordered that the Clerk of Court shall include and incorporate in the transcript of appeal the entire record and all exhibits, with the exception of such portions thereof that may, by agreement of counsel, be eliminated.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,  
United States Judge.

O- K.

ROBERT A. HUNTER,  
THIGPEN & HEROLD.

Indorsed:—Order for Amended Praecipe. Filed Jan. 3, 1920.

151

## STIPULATION OF COUNSEL.

In the District Court of the United States For the Western District of Louisiana.

United States of America,

vs.

No. 1166 In Equity.

Thomas J. Stockley, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

To avoid the inclusion in the transcript of the plats, Land Office Records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute and the survey thereof, it is stipulated that the lot in controversy forms a part of the tract described in the homestead entry of said Thomas J. Stockley, and that at the time said entry was made the tract embraced therein, including the lot in suit, was public land of the United States, defendants claiming under the United States only and through the homestead entry of said Stockley.

It is stipulated that the orders of the Department of the Interior offered by plaintiff releasing certain land from the effect of the withdrawal orders and restoring same to entry do not include or refer to Township 20 North, Range 16 West.

It is agreed that Bulletin 429, issued by the Government Printing Office in 1910, entitled "Oil and Gas in Louisiana, with a Brief Summary of their Occurrence in Other States", marked Plaintiff's M, which said Bulletin was offered in evidence and formed a part of the testimony in the contest proceedings upon the homestead entry of the said Stockley, shall be sent up to the Court of Appeals in the original.

It is further agreed that the printed pamphlet, containing the rules of practice in cases before the United States District Land Office, the General Land Office and the Department of the Interior, approved December 9, 1910, marked plaintiff's exhibit JJ, shall be sent up to the Court of Appeals in the original, and the Court may take judicial notice thereof, or of the said rules as published in the public land decisions of the Department of the Interior Volume 44, page 395, et seq.

To abbreviate the record on appeal, it is agreed that the Clerk shall copy into the transcript of appeal the following portions only of the instructions issued by the Commissioner of the General Land Office under order of the Secretary of the Interior June 1, 1908, contained in printed pamphlet and marked plaintiff's exhibit E, to-wit: (a) The title page. (b) the order of the Secretary of the Interior of June 1, 1908, set forth on page 3. (c) Paragraphs 23 to 44, inclusive, on pages 10, 11 and 12, under the title Receipts. All other portions of said pamphlet shall be omitted.

It is further agreed, in order to obviate the copying into the transcript of the documentary evidence and testimony in support thereof, that Thomas J. Stockley made settlement on the 10 day of March, 1897, on the property embraced in his homestead entry (Baton Rouge Number 03472), formal entry of which was made November 13, 1905. After all legal notices, said Stockley submitted final proof on January 5, 1909. On January 16, 1909, he submitted the non-mineral affidavit.

It is further stipulated and agreed (subject to and with full reservation of all objection and all other rights and without waiver of any of same) that the Clerk of Court shall copy and incorporate in the transcript of appeal the following pleadings, papers, exhibits and documents, to-wit:



1. The Bill of Complaint.

2. Answer of all defendants.

3. Minute entry relative to plea in bar.

4. Note of Evidence taken upon the hearing of the plea in bar. (The exhibits offered at said hearing were re-offered upon the trial of the merits, and are to be inserted only once, and in connection with the portion of the record which relates to the trial of the merits).

5. Opinion of the Court upon the plea in bar.

153 6. Order of Court overruling plea in bar, and referring case to E. Randolph, Special Master in Chancery.

7. Note of evidence taken at hearing on merits before Master in Chancery.

8. Withdrawal order of December 15, 1908.

9. Telegram from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, La., dated December 15, 1908.

10. Letter from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, La., dated December 15, 1908.

11. Non-mineral affidavit filed by Thomas J. Stockley in connection with his testimony on final proof, said affidavit being dated January 16, 1909.

12. Receipt issued to Thomas J. Stockley January 16, 1909.

13. Withdrawal order of July 2, 1910.

14. Letter from the Commissioners of the General Land Office to the Register and Receiver, dated February 27, 1912, directing a hearing in the matter of the homestead entry of Thomas J. Stockley.

15. Letter from the Commissioner of the General Land Office to the Register and Receiver, dated July 16, 1910, with notations thereon.

16. Agreement of counsel relative to hearing before Clerk of Court at Shreveport, La., in the matter of the contest of the entry of Thomas J. Stockley.

17. Note of evidence in full taken at hearing of contest before the Clerk of Court at Shreveport, La., in the matter of the homestead entry of said Stockley, together with copy of lease from Stockley to the Gulf Refining Company of Louisiana, annexed to said note of evidence. It is stipulated in this connection that all the evidence introduced at said hearing, as shown by said note of evidence, is embraced in this transcript and in the originals going up with same to the Court of appeals.

18. Decision of Register and Receiver, dated March 1, 1913.

19. Decision of the Commissioner of the General Land Office, dated December 22, 1913.

20. Letter of the Director of the Geological Survey to the Commissioner of the General Land Office, March 2, 1914.

21. Decision of the Secretary of the Interior upon motion for re-hearing, filed by Thomas J. Stockley.

22. Decision of the Secretary of the Interior, dated July 5, 1915.

23. Letter of the Commissioners of the General Land Office to the Register and Receiver, dated January 21, 1916, cancelling entry of Thomas J. Stockley.

24. Copy of final receipt dated March 2, 1891, with certificate of Commissioner of the General Land Office, thereto annexed, said receipt having been issued to Octave Harrington.

154 25. Final Certificate dated March 2, 1891, issued to Octave Harrington, together with certificate of Commissioner of the General Land Office, thereto annexed.

26. Receipt issued August 6, 1907, to Svan Hogland, and Register's certificate issued to Hoglund on the same date, together with certificate of the Commissioner of the General Land Office.

27. Statement prepared by James W. Neal, Special Agent of the General Land Office, showing production and value of oil removed by the Gulf Refining Company of Louisiana from land in suit with amounts of royalty paid and names of royalty claimants, and also dates of commencement and completion of wells, marked plaintiff's Exhibit II.

28. Report of E. H. Rawdolph, Special Master in Chancery.

29. Defendant's exceptions to Master's Report.

30. Opinion of Court confirming Master's report.

1  
8  
3

31. Final decree.
32. Petition of defendants for appeal and order allowing same.
33. Assigment of Errors filed by defendants.
34. Appeal bond filed by defendants.
35. Order of Court relative to contents of record on appeal.
36. This Stipulation of Counsel.

The Clerk of Court shall omit from said transcript all other papers, documents and exhibits.

Thus done and signed at Shreveport, Louisiana, this 27 day of February, 1920.

ROBERT A. HUNTER,  
Attorney for Plaintiff.

THIGPEN & HEROLD,  
Attorneys for Defendants.

Indorsed:—Filed Mar. 12, 1920.

155 United States District Court, Western District  
of Louisiana.

Clerk's Office:—

I, W. B. LEE, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing one hundred and fifty-four pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with the evidence adduced on the trial, in the cause entitled, United States of America, vs. Thomas J. Stockley, et al., No. 1166 on the Equity Docket of said Court, excepting such documents as were sent up in the originals in accordance with agreement of counsel—this transcript having been prepared in accordance with praecipe and stipulation of counsel filed in said cause, a copy of which accompanies this transcript.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 30th day of March, A. D. 1920.

(Seal)

W. B. LEE,

Clerk, U. S. District Court, for the  
Western District of Louisiana.

---

Citation omitted from the printed record, being filed in the Original.

\* \* \* \* \*

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from the Minutes of February 23rd, 1921.

No. 3521.

THOMAS J. STOCKLEY et als.

versus

THE UNITED STATES OF AMERICA.

On this day this cause was called, and, after argument by S. L. Herold, Esq., for appellants, and Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee, was submitted to the Court.

*Opinion of the Court.*

Filed March 24th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3521.

THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for the Western District of Louisiana.

J. A. Thigpen, and S. L. Herold, for Appellants.  
Robert A. Hunter, Special Assistant to the Attorney General, for Appellee.

Before Walker, Bryan, and King, Circuit Judges.

*KING, Circuit Judge:*

On August 2, 1917, the United States filed a Bill in Equity in the United States District Court for the Western District of Louisiana at Shreveport against Thomas J. Stockley, and certain persons claiming under an oil lease executed by him, seeking a decree declaring the United States to be the owner of Lot 5 of Section 5 in Township 20 N. Range 16 W., situated in the Parish of Caddo, Louisiana, containing 29.87 acres as per plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana, for an accounting for the oil and gas taken from said lot, and for injunction.

The defendants denied the title of the Government, and asserted that the land was a homestead owned by said Stockley. That he had made entry on November 13, 1905, and on January 5, 1909, final proof, and had received the Receiver's receipt upon final entry on January 16, 1909; that more than two years had elapsed since said final entry, without any contest or protest being initiated, wherefore under the act of Congress, approved March 3, 1891, he had become the absolute owner and entitled to patent thereto.

That on March 17, 1910, he had executed a mineral lease to the Gulf Refining Company of Louisiana. The defendants admitted the production of oil from said lands by the Gulf Refining Company and the amount thereof and the payment of royalties to Stockley, to W. H. Henderson, Jr., a transferee of Stockley, and to Natalie Oil Company, another transferee of Stockley.

The facts showed that in 1897 Stockley settled on said land. That on November 13, 1905, he filed his first homestead entry. He lived on said land until a few months before making his final entry. He built a two room house thereon and cultivated a part of the land. On December 15, 1908, this land with others was, "subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation" by Executive Order. On the same day, referring to this order, the local Register and Receiver were instructed by the General Land Office that no rights could be

obtained by any proceeding or claim initiated thereafter and that they must reject all such applications, selections, or entries, subject to appeal. That all such applications, selections, entries and proofs based upon selections, settlements, or rights made prior to the date of withdrawal "may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns \* \* \*."

On January 16, 1909, Stockley filed the non-mineral affidavit prescribed to be made for final entry, in which among other things he swore "that the land is essentially non-mineral land; that this application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes." At the time of filing this affidavit he paid to the Receiver of Public Moneys the sum of three dollars and one cent and received a receipt reciting its payment "in connection with Hd. Final, Serial No. 1088 for (describing land) 71.25 acres at -1.25 per acre \$—.

Fees .....	.....
Commissions .....	\$1.76
Testimony fees, etc. ....	1.25
	<hr/>
	\$3.01
Less Com.'s suspended in unofficial mys. (moneys) . .	1.76
	<hr/>
	\$1.25

C. J. GREENE,  
*Receiver of Public Moneys.*"

No certificate of the Register accepting the final proofs was made. On February 27, 1912, a contest of Stockley's entry was ordered by the Commissioner of the General Land Office on the ground that the land was mineral, being chiefly valu-



able for oil and gas, and that Stockley knew facts sufficient to charge him, as an ordinarily prudent man, with notice that the tract contained deposits of oil and gas and was chiefly valuable therefor.

On such hearing the Register and Receiver recommended that the patent issue but the Commissioner reversed this holding and on Stockley's appeal the Secretary of the Interior sustained the Commissioner's ruling.

The lapse of two years from the date of Greene's receipt was urged as preventing the denial of the patent. But the Secretary ruled that under the withdrawal order of December 15, 1908, and the instructions forbidding the Receiver to receive a final payment, and in the absence of a certificate from the Register, there had been no final entry, nor payment on final entry, so as to bring this case within the operation of the Act of March 3, 1891.

The Secretary, however, found that the entry of Stockley had been made in 1905 in good faith and therefore ordered that he be issued a surface patent under the provisions of the Act of July 17, 1914, reserving all minerals to the United States. Stockley declined the surface patent.

The District Court overruled the plea that the United States was barred by the two year limitation of the Act of March 3, 1891. (26 Stat. 1095-1099.)

The case was referred to a master who found the facts in favor of the contention of the United States and recommended a decree adjudging the title to the lands in them and also finding mesne profits against the defendants respectively in certain sums.

The Court has so decreed.

The defendants appeal, insisting

(1) That under the Act of March 3, 1891, Stockley is entitled to a patent and consequently has complete equitable title to the property.

(2) That his homestead entry was never affected by the order of withdrawal.

(3) That the orders of the Secretary of the Interior and Commissioner of the General Land Office were illegal, null and void, the decision of the local Register and local Receiver not having been appealed from.

(4) That said decisions are null and void because the land in question was not mineral at the time of final entry and that there was no evidence so showing.

(1) The rights of the Executive to withdraw lands from entry, settlement, or other forms of appropriation without special authority from the Congress is no longer open to question. Sustaining the power of the Executive, the Supreme Court of the United States has said:

"The Executive, as agent, was in charge of the public domain; by a multitude of orders extending over a long period of time and affecting vast bodies of land, in many States and Territories, he withdrew large areas in the public interest. These orders were known to Congress, as principal, and in not a single instance was the act of the agent disapproved. Its acquiescence all the more readily operated as an implied grant of power in view of the fact that its exercise was not only useful to the public but did not interfere with any vested right of the citizen."

United States v. Midwest Oil Co., 236 U. S. 459, 475.

The action of the Secretary of the Interior is a proper method of exercising the power of the President, and is to be taken as his act. United States v. Morrison, 240 U. S. 192.

(2) We do not think that this case falls under Act of March 3, 1891, or that there had ever been issued a receipt of the Receiver on final entry.

According to the testimony in this case to constitute a final entry the papers are submitted to the local Register and local Receiver.

If approved by them the Register issues a certificate and the papers are sent to the General Land Office.

That the final entry is not made until the certificate of the Register is issued is apparent from the ruling of the Interior Department:

"The proviso has reference solely to entries upon which final certificate has issued. Hence, any action that was taken with reference to this entry prior to the issuance of the final certificate cannot be considered as affecting the question whether the entry was or was not confirmed, as the action contemplated by the statute must be taken with reference

to the final entry. No case is brought within the terms of the act until after the final certificate has been issued. That fixes the period within which action must be taken to defeat confirmation under the proviso. (Ira M. Bond, 15 L. D. 228.)

"The language of the statute is, 'after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry' and when there shall be no pending contest or protest against the validity of 'such entry' the entryman shall be entitled to a patent. This case was not brought within the terms of the act until the issuance of the final certificate March 6, 1893. To defeat the confirmation it was necessary that some action should have been taken against that entry, within two years from that date."

Azariah W. Colburn, et al., 29 Land Decisions 539.

"It is too much to say that the mere offering of final proof by an entryman, together with the final commissions or the price of the land constitutes a final entry. As stated, final entry presupposes an adjudication and acceptance by the Register of the proof submitted, and the final certificate thereupon issued constitutes a formal declaration that the claimant is entitled to patent. It cannot be contended that the proviso to the act of 1891 relieved the register of his adjudicating power, and final entry is in no case allowed by him until and unless from the showing submitted he is satisfied that the law has been complied with."

Veach case (decision rendered November 26, 1918), 46 L. D., 496.

This is in harmony with the practice recognized by the United States Supreme Court in *Orchard v. Alexander*, 157 U. S. 372, 383. "Again, one of the instructions issued by the Land Department to the Registers and Receivers, and which has been in force for half a century is this: 'Final proof in preemption cases must be made to the satisfaction of the Register and Receiver, whose decision, as in other cases, is subject to review by this office.'"

That the mere receipt of the money by the Receiver until the papers are accepted as a final entry by the Register and Receiver and the Register's certificate issued, is not a "receipt on final entry" is made manifest by the instructions of the Commissioner of the General Land Office issued June 1, 1908, as follows:

"28. The issuance of a receipt by a Receiver of public moneys does not mean that the application, entry, proof, etc., in connection with which it issued, is allowed or approved, or will be allowed or approved. It merely means that he has received the money and that it is in his custody until it is applied or returned.

"29. If, after a receipt has been issued, the application, entry, proof, etc., with which the money was tendered cannot be allowed or approved, or the transcripts of records, plats, etc., cannot be made, you will notify the party to whom the receipt issued, and with this notification, the money tendered must be returned in the following way:

\* \* \* \* \*

"31. If, after a receipt has issued, the application, entry, proof, etc., can be allowed or approved, no further receipt for the money paid in connection therewith will be issued; but notice of such allowance or approval will be given the person to whom the receipt issued. Such notations as 'Application not yet allowed' or 'Certificate not yet issued' are not necessary on the receipts nor the abstracts."

It is evident therefore that this case is wholly unlike that of *Lane v. Hoglund*, 244 U. S. 174. In that case the land was fully open to entry, although covered with forest, at the time when entered. The case of one in *Hoglund's* condition was expressly excepted by the withdrawal order. It expressly excepted any land "embraced in any legal entry or covered by any lawful filing duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make the filing of record has not expired." *Hoglund* had complied with every requirement of the law and had secured the approval of his papers from the local officers, a receipt from the Receiver, and a certificate from the Register, the certificate stating that on presentation thereof to the General Land Office he was entitled to a patent for the land mentioned therein.

Here a non-mineral affidavit was made, which was essential to the making of a final entry, and it has been ruled that the facts within *Stockley's* knowledge at the time charged him with notice that it was not true.

In this case, these lands being mineral were not subject to being entered as a homestead whenever that fact became known. Rev. Stat. Sec. 2302.

Prior to the presentation of any final entry they had been withdrawn from entry.

The right of the Receiver to accept any money from an entryman had been withdrawn by the letter of December 15, 1908.

Payment of the moneys due was made to an officer then forbidden to take it.

No approval of the local officers was ever made until March 1, 1913, when the local Register and Receiver rendered a decision in favor of Stockley. On review by the Commissioner he reversed this finding in December, 1913, and ordered the homestead entry held for cancellation subject to appeal to the Secretary. Such appeal was taken and the Secretary affirmed the Commissioner's finding, holding that the effect of the order of the Department made on December 15, 1908, "was to suspend this and other entries in like situation and the receipt issued by the Receiver in this case was merely an evidence of the payment of fees and commissions and did not and could not relieve the entry from the suspension created by said order of December 15, 1908."

The Secretary further found:

"The investigation made and the evidence submitted convince the Department that the lands are, and were at date of final proof, valuable for their deposits of oil and gas, and that consequently this Department is, under the circumstances, without authority to issue final certificate and patent for said land, including the said mineral deposits. If patent be issued to the entryman, it must be under the provision of the act of July 17, 1914, *supra*, reserving to the United States the deposits of oil and gas in the land. The decision of the Commissioner, finding the lands to be mineral in character, is therefore affirmed, but under the circumstances the Department finds no evidence of bad faith existent at the time of the original entry in 1906 and is of the opinion that the entryman may be given a limited patent under the act of July 17, 1914. As thus modified, the Commissioner's decision is affirmed, and should this decision become final, the entryman will be permitted to take patent under the provisions of said act of July 17, 1914."

It thus appears that in this case no payment on final entry was made to the Receiver. That no final entry was made until March 1, 1913, and that therefore the act of March 3, 1891, did not, if applicable, prevent the rejection of the application.

Further what was really decided by the Secretary was that the entryman was entitled to receive a patent restricted to the surface of the land, reserving the minerals to the United States. This vested in him all agricultural rights;—that for which he said he was entering the land.

(3) It is insisted that Stockley's right to his homestead is excepted from this order of withdrawal of December 15, 1908, by its terms, whereby the withdrawal is made "subject to existing valid claims."

But at the time of this withdrawal Stockley had not presented any claim for final entry. The withdrawal order was based on the belief that these lands contained oil, and were not agricultural.

Until the issuance of a patent the United States has the right to ascertain if the lands are in fact mineral or not.

Orchard v. Alexander, 157 U. S., 372;

Parsons v. Venzke, 164 U. S., 89.

"In other words, the power of the Department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed."

Michigan Land & Lumber Co. v. Rust, 168 U. S., 589, 593.

The cases relied on by the appellants are cases of conflicting rights between an entryman and third parties and are not in point in defining the relative rights of an entryman before final entry as against the Government. This is clearly shown by the decisions.

In the Yosemite Valley case where one had purchased the improvements of an older settler and taken possession, prior to the passage of the act of Congress granting the Valley as a park to the State of California, with the intention to take up a homestead, it was held:

"The simple question presented for determination is whether a party, by mere settlement upon lands of the

United States, with a declared intention to obtain a title to the same under the pre-emption laws, does thereby acquire such a vested interest in the premises as to deprive Congress of the power to divest it by a grant to another party. \* \* \*

The question here presented was before this Court, and was carefully considered, in the case of *Frisbie v. Whitney*, reported in the 9th of Wallace. And it was there held that under the pre-emption laws mere occupation and improvement of any portion of the public lands of the United States, with a view to pre-emption, do not confer upon the settler and right in the land occupied, as against the United States, or impair in any respect the power of Congress to dispose of the land in any way it may deem proper; and that the power of regulation and disposition, conferred upon Congress by the Constitution, only ceases when all the preliminary acts prescribed by those laws for the acquisition of the title, including the payment of the price of the land, have been performed by the settler. When these prerequisites have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he cannot be subsequently deprived. He is then entitled to a certificate of entry from the local land officers, and ultimately to a patent from the United States. Until such payment and entry the acts of Congress give to the settler only a privilege of pre-emption in case the lands are offered for sale in the usual manner; that is, the privilege to purchase them in that event in preference to others. The United States by those acts enter into no contract with the settler, and incur no obligation to any one that the land occupied by him shall ever be put up for sale. They simply declare that in case any of their lands are thrown open for sale the privilege to purchase them in limited quantities, at fixed prices, shall be first given to parties who have settled upon and improved them. The legislation thus adopted for the benefit of settlers was not intended to deprive Congress of the power to make any other disposition of the lands before they are offered for sale, or to appropriate them to any public use. \* \* \*

"The whole difficulty in the argument of the defendant's counsel arises from his confounding the distinction made in all the cases, whenever necessary for their decision, between

the acquisition by the settler of a legal right to the land occupied by him as against the owner, the United States; and the acquisition by him of a legal right as against other parties to be preferred in its purchase, when the United States have determined to sell."

The Yosemite Valley Case, 15 Wall., 77, 86, 87.

These cases are cited with approval in the case of *Shiver v. United States*, 159 U. S. 491, 476, where it is also said:

"The right which is given to a person or corporation, by a reservation of public lands in his favor, is intended to protect him against the actions of third parties, as to whom his right to the same may be absolute. But, as to the Government, his right is only conditional and inchoate."

Here the entryman was applying for an agricultural homestead. The Statutes regulating such homesteads expressly provided "nor shall mineral lands be liable to entry and settlement under this provision." Rev. St. Sec. 2302.

He applied, after withdrawal, for final entry, filing the required non-mineral affidavit, which was, as held by the Land Department, and found as a fact, untrue. He cannot be considered as one having a legal valid claim to this homestead against the United States.

(4) That no appeal was taken from the finding of March 1, 1913, made by the Register and Receiver, does not deprive the General Land Commissioner and the Secretary of the Interior of jurisdiction to review the same. Supervision of the action of the local Register and Receiver in accepting or rejecting final entries of homesteads is vested in the Commissioner of the General Land Office and the Secretary of the Interior who can review and reverse the action of such Registers and Receivers.

Revised Statutes, Sections 441, 453, and 456 provide:

"Sec. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects: \* \* \*

"Second. The public lands, including mines.

"Sec. 453. The Commissioner of the General Land Office shall perform under the direction of the Secretary of the



Interior all executive duties appertaining to the surveying and sale of public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of lands, and the issuing of patents for all grants of land under the authority of the Government.

"Sec. 456. All returns relative to the public lands shall be made to the Commissioner of the General Land Office."

The Supreme Court of the United States has affirmed the power to exercise this supervision, in the absence of an appeal.

"The phrase 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the land department of which he is the head. \* \* \* As was said by the Secretary of the Interior on the application for the recall and cancellation of the patent in this pueblo case (5 Land Dec. 494): 'The statutes in placing the whole business of the department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt. When proceedings affecting titles to lands are before the department, the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. The rules prescribed are designated to facilitate the department in the despatch of business, not to defeat the supervision of the Secretary. For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annulment, it

would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated which it would be immediately his duty to ask the Attorney General to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him and therefore he was without authority in the matter."

*Knight v. United States Land Association*, 142 U. S., 161, 177, 178.

See also

*Orchard vs. Alexander*, 157 U. S., 372;  
*Plested vs. Abbey*, 228 U. S., 42;  
*Hawley vs. Diller*, 178 U. S., 481, 488;  
*Kirk vs. Olson*, 245 U. S., 225, 228.

(5) The findings of the General Land Commissioner and the Secretary of the Interior are not without evidence to support them and are valid.

Here the General Land Commissioner and the Secretary of the Interior, on appeal, after hearing from the entryman, found as facts that at the date of application for final entry the land was mineral in character and that the applicant when making his non-mineral affidavit had knowledge of facts, which put a man of ordinary intelligence on notice that it was mineral. It is conceded that not long after making such affidavit he leased the land to an Oil Company, for the purpose of its raising oil, reserving royalties.

Unless there is an absence of evidence to support them, the findings of fact of the Secretary of the Interior, in a matter properly before him, are binding on the courts. *Johnson v. Riddle*, 240 U. S. 467.

The master has found on the facts that the land was mineral in character and that the entryman was charged with notice of its character at the time he made his application for final entry and his non-mineral affidavit. The trial court has approved these findings of fact.

It cannot be said that there is a want of evidence upon which to base them. The findings of fact of the master approved by the trial court are well nigh controlling on appeal if there is any substantial evidence to support them. *Osley*,

et al., vs. Adams, 268 Fed. 114, 117; In re Schwab-Kepner Co. 203 Fed. 475; Greey vs. Dockendorff, 241 U. S. 513.

The decree of the District Court is Affirmed.

(Original filed March 24, 1921.)

*Judgment.*

Extract from the Minutes of March 24th, 1921.

No. 3521.

THOMAS J. STOCKLEY et als.

versus

THE UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Thomas J. Stockley, Robert J. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, and the Gulf Refining Company of Louisiana, and the surety on the appeal bond herein, American Surety Company of New York, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

*Petition for Appeal and Order Allowing Same.*

Filed April 4, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3521.

THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

To the Honorable Judges of the Circuit Court of Appeals of the United States for the Fifth Circuit:

The above named defendants and appellants, Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the decree made and entered in this case on the 24th day of March, 1921, wherein this Honorable Court affirmed the decree of the District Court of the United States for the Western District of Louisiana, do hereby appeal from said decree of your Honorable Court to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith;

And now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law and for such other process as is required to perfect the appeal here prayed for, to the end that the errors therein may be corrected.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

*Solicitors for Defendants and Appellants.**Order.*

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas on defendants' giving bond

conditioned as required by law in the sum of Eighty-five Thousand (\$85,000.00) Dollars.

(Signed)

R. W. WALKER,  
*Judge United States Circuit Court of Appeals.*

April fourth, 1921.

*Assignment of Errors.*

Filed April 4th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3521.

THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

And now, on this the fourth day of April, 1921, come all of the above named defendants and appellants, by their solicitors, J. A. Thigpen and S. L. Herold, and say that the decree entered in the above cause by the Honorable United States Circuit Court of Appeals for the Fifth Circuit, on the 24th day of March, 1921, affirming the decree of the District Court of the United States, for the Western District of Louisiana, is erroneous and that the same is unjust to the said defendants and appellants; and for specification of such errors show:

First.

The Court erred in holding that the homestead entry of the land in controversy, made by Thomas J. Stockley and under which he held and possessed such land, was affected by the withdrawal order of December 15th, 1908.

Second.

The Court erred in holding that the confirmatory provisions of Section Seven of the Act of March 3rd, 1891, are not controlling of this case.

## Third.

The Court erred in overruling the plea in bar set up by defendants, under which they claim the benefit of the confirmatory provisions of Section Seven of the Act of March 3rd, 1891, as rendering null and void proceedings in the Interior Department, had under a contest constituted after the expiration of more than two years from the date of the issuance to said Thomas J. Stockley of the Receiver's receipt upon final entry of the tract of land here in controversy under the homestead laws, when there existed within such statutory period of two years no contest or protest against such entry.

## Fourth.

The Court erred in holding that the submission of final proof by a qualified homestead entryman, who had complied with the provisions of the law relative to residence, settlement and cultivation, and the payment by the said entryman of all fees and commissions due, and the filing by him of all necessary affidavits, followed by the issuance to the entryman of the receipt of the Receiver of public moneys for all such sums paid, was not a final entry under the terms of the said Section Seven of the Act of Congress of March 3rd, 1891.

## Fifth.

The Court erred in holding that after the payment of all sums due by the entryman, the issuance by the Receiver of public moneys of receipt therefor upon the filing by the entryman of final proof and all affidavits required by law, is not a Receiver's receipt upon final entry under the terms of Section Seven of the Act of Congress of March 3rd, 1891.

## Sixth.

The Court erred in holding that this case is not governed by the case of Lane vs. Hoglund, 244 U. S. 174.

## Seventh.

The Court erred in holding that the issuance of the final certificate by the Register is essential to the setting in operation of the confirmatory provisions of Section Seven of March 3rd, 1891.

## Eighth.

The Court erred in holding that approval of Stockley's final proof was necessary to set in motion the period of limitation contained in the confirmatory provisions of Section Seven of the Act of March 3rd, 1891.

## Ninth.

The Court erred in holding that the effect of the order of the Land Department, December 15th, 1908, was to suspend the homestead entry of Thomas J. Stockley, and to cause the receipt issued by the Receiver to be taken out of the effect of the statute contained in Section Seven of the Act of March 3rd, 1891.

## Tenth.

The Court erred in holding that the property in controversy was mineral land at the date of Stockley's final proof and non-mineral affidavit, and at the issuance to him of the Receiver's receipt.

## Eleventh.

The Court erred in holding that any effect could be given to the action of the Secretary of the Interior and of the Commissioner of the General Land Office in reversing the concurrent decision of the Register and Receiver of the local land office sustaining Stockley's entry as against the contest filed by the United States, when no appeal had been taken by the United States from such decision.

## Twelfth.

The Court erred in holding that there was any evidence whatever before the Commissioner of the General Land Office

or the Secretary of the Interior that the land in controversy was in the legal sense mineral land at the date of Stockley's final proof and non-mineral affidavit.

Thirteenth.

The Court erred in holding that under the laws of the United States land is mineral in character as oil or gas lands when at the date involved no oil or gas had been found thereon or on adjacent land.

Fourteenth.

The Court erred in holding that a decision of the Secretary of the Interior purporting to cancel a homestead entry on the ground that the land is and was at the date of final proof valuable for its deposits of oil or gas can be given any legal force or effect when the record before the Secretary fails to show any evidence that any oil or gas had been found or was known to exist in said land at such date and when there existed no conflict whatever in the evidence that no prudent oil operator would at such date have expended any money to drill on such land.

Fifteenth.

That the Court erred in holding title to be in the United States as against the defendants.

Wherefore the defendants pray that the said decree be reversed and for general relief.

(Signed.)

(Signed.)

J. A. THIGPEN,

S. L. HEROLD,

*Solicitors for Defendants and Appellants.*



*Appeal Bond.*

Filed April 11th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3521.

THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, Thomas J. Stockley, Robert J. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, J. G. Hester, and the Gulf Refining Company of Louisiana, as principal, and the American Surety Company of N. Y., as surety, are held and firmly bound unto and in favor of the United States of America, appellee, in the above cause, in the full sum of Eighty-five Thousand & No/100 (\$85,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of April, 1921.

The condition of the above obligation is such that,

Whereas, on the 24th day of March, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, J. G. Hester, and the Gulf Refining Company of Louisiana, were appellants, numbered on the Equity Docket 3521, a decree was rendered and signed and filed, affirming the decree of the District Court against the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, J. G. Hester, and the Gulf Refining Company of Louisiana, and the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company,

J. G. Hester and the Gulf Refining Company of Louisiana having obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Thomas J. Stockley, Robert L. Stringfellow, W. K. Henderson, Jr., Natalie Oil Company, J. G. Hester, and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

	J. G. HESTER,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	THOMAS J. STOCKLEY,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	ROBERT L. STRING- FELLOW,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	W. K. HENDERSON, JR.,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	NATALIE OIL COMPANY,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	GULF REFINING COMPANY OF LA.,
(Signed)	By S. L. HEROLD, <i>Atty.</i>
	AMERICAN SURETY COM- PANY OF N. Y.
(Signed)	By R. L. GOFFNEY, [SEAL.] <i>Attorney in Fact.</i>

Countersigned by  
(Signed) J. C. FRICHEL.

Approved this 11th day of April, 1921.

(Signed) R. W. WALKER,  
*U. S. Circuit Judge.*

*Stipulation for Transmission of Original Exhibits.*

Filed April 11th, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3521.

THOMAS J. STOCKLEY et al.

v.

THE UNITED STATES OF AMERICA.

In the above numbered and entitled cause it is agreed by and between counsel for appellants and counsel for appellee, that the documentary evidence and exhibits sent up in the original to the United States Circuit Court of Appeals, in accordance with the stipulation of counsel incorporated in the transcript of appeal (pages 179 to 184, inclusive), shall likewise be sent up in the original to the Supreme Court of the United States.

Thus done and signed this 9th day of April, 1921.

(Signed) THIGPEN & HEROLD,  
*Attorneys for Appellants.*  
(Signed) ROBERT A. HUNTER,  
*Special Assistant to the Attorney General,*  
*Attorney for Appellee.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 186 to 212 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3521, wherein Thomas J. Stockley, et als., are appellants,

and The United States of America, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 185 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the exhibits forwarded to this Court in the original are transmitted to the Supreme Court of the United States, as per stipulation at page 212 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 12th day of April, A. D. 1921.

[Seal of the United States Circuit Court of Appeals,  
Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit  
Court of Appeals, Fifth Circuit.*

#### THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana are appellants, and you are appellee, No. 3521 of the Docket of this Court, to show cause, if any there be, why the judgment rendered against the said Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana as in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this fourth day of April in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of the United States Circuit Court of Appeals,  
Fifth Circuit.]

R. W. WALKER,  
*United States Circuit Judge.*

[Endorsed:] No. 3521. United States Circuit Court of Appeals, Fifth Circuit. Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, W. K. Henderson, Jr., Natalie Oil Company, and Gulf Refining Company of Louisiana, appellants, vs. the United States of America, appellee. Citation. U. S. Circuit Court of Appeals. Filed Apr. 11, 1921. Frank H. Mortimer, clerk.

Service accepted and acknowledged this April 6th, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

Endorsed on cover: File No. 28,249. U. S. Circuit Court Appeals, 5th Circuit. Term No. 892. Thomas J. Stockley, Robert L. Stringfellow, J. G. Hester, et al., appellants, vs. The United States of America. Filed April 27th, 1921. File No. 28,249.

# I.

## INDEX TO BRIEF.

	Page
Argument .....	12
Assignment of Errors.....	3
Pleadings .....	1, 2, 3
Statement of Case.....	7

### I.

Under the Act of March 3, 1891, Stockley was entitled at the date of the contest to a patent as evidence of his complete ownership and at that date possessed and still possesses a title which could be assailed only in a judicial proceeding based upon allegation and proof sufficient to justify the cancellation of a patent .....	12
--	----

#### (a)

Lane v. Hoglund, 224 U. S., 174, and Payne v. Newton, 255 U. S., 438, are conclusive as to the appellant's rights .....	15
---	----

#### (b)

Error in the decision of the Circuit Court of Appeals in holding that the confirmative provisions of Act of March 3, 1891, are not set in motion until the issuance of final certificate.....	19
---	----

#### (c)

The running of the statute is not affected by the character of the land.....	23
--	----

## II.

### (d)

	Page
Error in decision of the Circuit Court of Appeals in holding that the confirmative effect of the statute was stayed by presidential withdrawal.....	26

### (e)

Error in the decision of the Circuit Court of Appeals in holding that the confirmative effect of the Act of March 3, 1891, was stayed by the effect of instructions of the Commissioner of the General Land Office .....	35
--	----

## II.

The decisions of the Secretary and of the Commissioner directing the cancellation of Stockley's entry were void for want of jurisdiction, the decision of the local officers not having been appealed from..	37
--	----

## III.

The decision of the Secretary and of the Commissioner are null for error of law.....	47
--	----

### (a)

Mineral land under the statute means land actually known at the time of final proof to be valuable for minerals .....	48
---	----

### (b)

The decision was rendered without any evidence whatsoever to sustain the finding that the land was mineral in character.....	56
--	----

### III.

#### LIST OF AUTHORITIES CITED IN BRIEF.

Page

##### STATUTES.

Section 3, Act of May 14, 1880 (21 Statutes at Large 40) .....	8
Section 7, Acts of March 3, 1891 (26 Statutes at Large, 1095), pages .....	
3, 4, 5, 6, 8, 10, 12, 13, 15, 19, 21, 23, 25, 26, 34, 35, 36	
Section 2302. Revised Statutes.....	48

##### RULINGS OF THE LAND DEPARTMENT.

Arthur v. Earle, 21 L. D., 92.....	49
Brown v. Jefferson, 1 L. D., 467.....	44
Central Pacific Ry. Co., 8 L. D., 30.....	44
Circular, Jan. 19, 1911, 39 L. D., 458.....	39, 41, 43
Cleghorn v. Bird, 4 L. D., 478.....	51
County Commissioners v. Alexander, 5 L. D., 126....	51, 52
Crowther Re, 43 L. D., 262.....	21
George W. Dally, 41 L. D., 295.....	46
Dovenspech v. Dell, 7 L. D., 20.....	45
Davis v. Fraser, 21 L. D. 294.....	45
Dughi v. Hawkins, 2 L. D., 721.....	51
Farris v. Mitchell, 11 L. D., 300.....	44
Freeman v. Central Pac. Ry. Co., 6 L. D., 249.....	45
Re Harris, 42 L. D., 611.....	15, 20
Re Harris, 28 L. D., 90.....	24
Herman v. Chase, 39 L. D., 590.....	25
Hazard v. Swain, 14 L. D., 231.....	45
Hobbs v. Goulette, 18 L. D., 409.....	45



#### IV.

	Page
Instructions, 43 L. D., 322.....	21, 25
Re Jas. L. Jacobs et al., 7 L. D., 570.....	49
Re Judicak, 43 L. D., 246.....	21, 25
Lindgren v. Boo, 7 L. D., 98.....	45
McSherry v. Gildea, 5 L. D., 585.....	44
Morrison v. McKissick, 5 L. D., 245.....	45
Rea v. Stephenson, 15 L. D., 37.....	45, 49
Rules of Practice, 39 L. D., 459.....	41, 43
Rules of Practice, 39 L. D., 404.....	43
Swims v. Ward, 13 L. D., 686.....	45
Southern Pac. Ry. Co. v. Saunders, 6 L. D., 98.....	45

#### TABLE OF CASES CITED.

Ard v. Brandon, 156 U. S., 537.....	39
Black v. Jackson, 177 U. S., 349.....	29
Bailey v. Saunders, 228 U. S., 605.....	57
Chrisman v. Miller, 197 U. S., 321.....	52
Cornelius v. Kessel, 128 U. S., 456.....	42
Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S., 309 .....	42
Colorado Coal & Coke Co. v. U. S., 123 U. S., 307....	50
Doran v. Kennedy, 237 U. S., 365.....	39
Deffebach v. Hawke, 115 U. S., 392.....	48
Davis v. Weibhold, 139 U. S., 507.....	49
Diamond Coal & Coke Co. v. U. S. 233 U. S., 236.....	52
Germain Iron Co. v. James, 89 Fed., 811; 32 C. C. A., 348 .....	43
Habana, The, 175 U. S., 685.....	44
Howe v. Parker, 190 Fed. 746; 111 C. C. A. 466.....	42

# V.

	Page
Interstate Commerce Com. v. L. & N. Ry. Co., 227 U. S., 81.....	57
James v. Germain Iron Co., 107 Fed. 597; 46 C. C. A., 476 .....	43
Kansas Pac. Ry. Co. v. Dunmeyer, 113 U. S., 169....	30
Lane v. Hoglund, 244 U. S., 174.....5, 15, 20, 22, 32, 36	
Lytle v. Arkansas, 9 Howard, 332.....	38
Love v. Flahive, 205 U. S., 199.....	43
Leonard v. Lennox, 104 C. C. A., 296; 181 Fed., 760..	17, 55
Mining Co. v. United States, 226 U. S., 550.....	32
Osborn v. Froyseth, 216 U. S., 571.....	39
Payne v. United States ex rel. Newton, 255 U. S., 438. ....	19, 22, 23
Payne v. New Mexico, 255 U. S., 368.....	18, 55
Railroad Co. v. United States, 234 U. S., 185.....	57
St. Paul M. & M. Ry. Co. v. Donohue, 210 U. S., 30...	8
Sturr v. Beck, 133 U. S., 541.....	29
United States v. Waddell, 112 U. S., 76.....	29
United States v. Buchanan, 232 U. S.....	32
United States v. Iron Silver Min. Co. et al., 128 U. S., 673 .....	50
Wilcox v. Jackson, 13 Peters, 513.....	37
Weeks v. Bridgeman, 159 U. S., 546.....	38
Wyoming v. United States, 255 U. S., 489.....	18, 54



# **SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1922.**

---

**No. \_\_\_\_\_**

---

**Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.**

---

**THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW,  
J. G. HESTER, ET AL.,**

**Appellants,**

***versus***

**THE UNITED STATES OF AMERICA.**

---

**Original Brief for Appellants.**

---

This suit was brought by the Government to recover from the possession of defendants a tract of land in Caddo Parish, Louisiana, for the cancellation of certain instruments, for an injunction, accounting and receivership.

The allegations of the bill are, in substance:

That on and before December 15, 1908, the plaintiff was the owner of the property in controversy as part of the public domain, and that on December 15, 1908, in order to conserve the public interests, and in aid of such legislation

as might thereafter be enacted, the President withdrew from settlement and entry and all other forms of appropriation all of the public lands within the township in which the land in controversy lies, and that such order of withdrawal was confirmed by executive order of date July 2, 1910, under authority of act of June 25, 1910; that notwithstanding such order of withdrawal, and "without any valid title, lawful right or authority, the defendants in bad faith entered upon and took possession of such property and drilled thereon three wells from which they extracted quantities of oil and gas."

Defendants answered, claiming title to the property under a homestead entry by Thomas J. Stockley on November 13, 1905, and under contracts entered into by Stockley subsequent to his final proof and payment.

By special plea in bar (see paragraph VIII of the answer, Record, pp. 15 and 16) defendants set up that on January 5, 1909, Stockley made final proof under his homestead entry; that receiver's receipt upon the final entry of said land under the homestead laws issued to him on January 16, 1909,

"and defendants show that within two years from the date of issuance of said receiver's receipt upon final entry of said land under the homestead laws, no contest or protest against the validity of said entry was initiated against the said Thomas J. Stockley, and that at the expiration of two years from the issuance of said receiver's receipt the said Stockley was, under the laws of the United States, and particularly under the act of Congress

approved March 3, 1891, the absolute owner of said land, and was entitled to patent thereto, which the Department of the Interior was without right or power to deny to him. All of which defendants allege to be true and plead the same in bar to the bill."

Further pleading in the answer defendants set up that Stockley's title was good for the reason that he had made and perfected homestead entry, which was still legally existent; that proceedings had been had in the Interior Department purporting to cancel Stockley's homestead entry, but that such proceedings were void for reasons set out in paragraph IX of the answer, leaving the entry and Stockley's rights as owner intact.

On motion of the defendants, and pursuant to Equity Rule 29, the plea in bar was advanced for hearing before trial on the merits (Record, p. 20), and was overruled in a written opinion (Record, p. 39). Thereafter (Record, pp. 138, *et seq.*), the entire case was tried and decree rendered for complainant.

The decree was affirmed by the Circuit Court of Appeals (Record, p. 187), and this appeal followed; defendants assigning as error:

### **ASSIGNMENT OF ERRORS.**

#### **I.**

The Court erred in holding that the homestead entry of the land in controversy made by Thomas J. Stockley, and

under which he held and possessed such land, was affected by the withdrawal order of December 15, 1908.

## II.

The Court erred in holding that the confirmatory provisions of Section 7 of the act of March 3, 1891, are not controlling of this case.

## III.

The Court erred in overruling the plea in bar set up by defendants, under which they claim the benefit of the confirmatory provisions of Section 7 of the act of March 3, 1891, as rendering null and void proceedings in the Interior Department, had under a contest instituted after the expiration of more than two years from the date of the issuance to said Thomas J. Stockley of the receiver's receipt upon final entry of the tract of land here in controversy under the homestead laws, when there existed within such statutory period of two year no contest or protest against such entry.

## IV.

The Court erred in holding that the submission of final proof by a qualified homestead entryman, who had complied with the provisions of the law relative to residence, settlement and cultivation, and the payment by the said entryman of all fees and commissions due, and the filing of all necessary affidavits, followed by the issuance to the entryman of the receipt of the receiver of public moneys for all

such sums paid, was not a final entry under the terms of the said Section 7 of the act of Congress of March 3rd, 1891.

#### V.

The Court erred in holding that after the payment of all sums due by the entryman, the issuance by the receiver of public moneys of receipt therefor upon the filing by the entryman of final proof and all affidavits required by law, is not a "receiver's receipt upon final entry" under the terms of Section 7 of the act of Congress of March 3rd, 1891.

#### VI.

The Court erred in holding that this case is not governed by the case of *Lane v. Hoglund*, 244 U. S., 174.

#### VII.

The Court erred in holding that the issuance of the final certificate by the register is essential to the setting in operation of the confirmatory provisions of Section 7 of the act of March 3rd, 1891.

#### VIII.

The Court erred in holding that approval of Stockley's final proof was necessary to set in motion the period of limitation contained in the confirmatory provisions of Section 7 of the act of March 3rd, 1891.

#### IX.

The Court erred in holding that the effect of the order of the Land Department, December 15, 1908, was to suspend



the homestead entry of Thomas J. Stockley, and to cause the receipt issued by the receiver to be taken out of the effect of the statute contained in Section 7 of the act of March 3rd, 1891.

#### X.

The Court erred in holding that the property in controversy was mineral land at the date of Stockley's final proof and non-mineral affidavit, and at the issuance to him of the receiver's receipt.

#### XI.

The Court erred in holding that any effect could be given to the action of the Secretary of the Interior and of the Commissioner of the General Land Office in reversing the concurrent decision of the Register and Receiver of the local land office sustaining Stockley's entry as against the contest filed by the United States, when no appeal had been taken by the United States from such decision.

#### XII.

The Court erred in holding that there was any evidence whatever before the Commissioner of the General Land Office or the Secretary of the Interior that the land in controversy was known to contain minerals at the date of Stockley's final proof and non-mineral affidavit.

#### XIII.

The Court erred in holding that under the laws of the United States land is mineral in character as oil or gas lands

when at the date involved no oil or gas had been found thereon or on adjacent land.

#### XIV.

The Court erred in holding that a decision of the Secretary of the Interior purporting to cancel a homestead entry on the ground that the land is and was at the date of final proof valuable for its deposits of oil or gas can be given any legal force or effect when the record before the Secretary fails to disclose any evidence that any oil or gas had been found or was known to exist in said land at such date and when there existed no conflict whatever in the evidence that no prudent oil operator would at such date have expended any money to drill on such land.

#### XV.

That the Court erred in holding title to be in the United States as against the defendants.

#### STATEMENT.

A concise statement of the history of the case, in so far as it cannot be the subject of conflict between plaintiff and defendant, will facilitate argument.

On March 10, 1897, the defendant, Stockley, settled on the land in controversy, erected his residence thereon, proceeded to clear the land, and has since that date continuously resided on and cultivated the tract.

On November 13, 1905, he made formal entry under the homestead laws.

Under Section 3 of the act of May 14, 1880, the entryman had the right to take all or any portion of the time intervening between settlement and entry in making up the five years' residence and cultivation necessary to complete the claim under the homestead laws.

*St. Paul, M. & M. Ry. Co. v. Donohue*, 210  
U. S., 30.

Consequently, at any time after the date of the filing of his homestead entry, Stockley had the right to make final proof.

On December 15, 1908, subject to exceptions hereafter to be mentioned, the township was included in an executive order of withdrawal. At this date, it will be noted that Stockley had not only made his entry and paid the initial fees required therefor, but had complied fully with the laws relative to the residence and cultivation requisite to the securing of absolute title.

On January 5, 1909, the entryman made final proof of his entry, complying with all provisions of law and of departmental regulations, except the making of the "non-mineral" affidavit, which latter instrument he filed on January 16, 1909 (Record, p. 52; see also admission, p. 180), upon which filing and upon his payment of all fees and commissions required by law, a receipt from the Receiver of Public Moneys was issued to him (Record, p. 57) for all sums due on final entry.

More than a year thereafter, to-wit, on March 17, 1910, Stockley succeeded in interesting the Gulf Refining Company of Louisiana in taking a mineral lease of this property, under which lease oil wells were later drilled.

On January 26, 1910, on report of a special agent confirming the truth of all of the affidavits filed in support of Stockley's entry, the Commissioner of the General Land Office ordered the case "clear-listed and closed as to the Field Service Division." (Record, p. 63.)

Notwithstanding this report and the expiration of more than two years from the date of the receiver's receipt issued on final entry, the Commissioner, on February 27, 1912, directed a contest against Stockley's entry, based upon the withdrawal and the alleged mineral character of the land, which resulted in a decision of the Register and Receiver sustaining the entryman's title. (Record, p. 107). No appeal was taken from this decision by the United States, but notwithstanding the absence of an appeal, the Commissioner of the General Land Office proceeded to take up the matter as upon appeal and held the entry for cancellation (Record, p. 114), although concluding,

"there is no doubt but that he (Stockley) settled on the land in good faith for a home, in ignorance of possible values for oil and gas."

Appeal was taken by Stockley to the Secretary of the Interior, who affirmed the order of the Commissioner, but on account of Stockley's good faith, modified that decision

so as to authorize the issuance of a patent with reservation of the minerals to the Government, under the act of July 17, 1914.

As appears from the Secretary's opinion (Record, p. 120), it was urged before him that under the provisions of the act of Congress of March 3, 1891 (26 Stat. at Large, 1095), the Interior Department was without jurisdiction to entertain the contest in question; which contention, however, the Secretary overruled. These decisions of the Commissioner and the Secretary, respectively, were based, as appears from the record, upon their findings that the lands in question had been withdrawn by executive order of December 15, 1908, and that the land is and was at the date of final proof valuable for deposits of oil and gas.

This decision of the Secretary of the Interior, motion for rehearing of which was denied on August 26, 1915 (Record, p. 118), has been treated since by Stockley and those holding under him as null (see Record, p. 123), as indeed is any decision rendered by an executive officer in a case beyond his jurisdiction, or in violation of established rules of law.

This suit was instituted by the Government on August 2, 1917, two years after the decision of the Secretary of the Interior. The bill, however, nowhere refers to Stockley's homestead entry, nor would a most careful reading of the Government's pleadings reveal the fact that such entry

had ever been made or that the proceedings above referred to had ever taken place.

Entirely ignoring these proceedings, and treating the defendants as naked trespassers on the public domain, the bill, of course, contains no prayer for the annulment of Stockley's claim as an entryman under the homestead laws. The Government's suit, therefore, must stand or fall upon the theory upon which it was instituted; namely, that Stockley had at the date of the filing of the bill no rights of any character in the land, toward which he occupied merely the position of an unlawful trespasser. If, therefore, the record discloses such state of facts as to show that Stockley possessed on the date of the filing of the suit a legal or equitable title of any kind, the bill, of course, should have been dismissed. If, under the record, the proceedings resulting in the decision of the Secretary above referred to, were not such as wholly to have wiped out Stockley's claim, the Government's suit must fail; and its success must, perforce, rest upon demonstration that the effect of the Secretary's decision in itself was to leave Stockley without any further rights in the premises.

For, if the Interior Department was not the forum vested by law with power and jurisdiction to annul Stockley's entry, or if the proceedings before the Department were in themselves null to the extent of rendering the action of the Secretary void, the plaintiff could take nothing in this suit, for this case rests entirely, as pointed out, upon the conclusive effect of the decision of the Secretary as wiping out Stockley's rights under his final entry.

## ARGUMENT.

### I.

Under the act of March 3, 1891, Stockley was entitled at the date of the contest to a patent as evidence of his complete ownership; and at that date possessed and still possesses a title which could be assailed only in judicial proceedings based upon charges sufficient to justify the cancellation of patent.

As before pointed out, this suit is not instituted to obtain a judicial cancellation of the title issuing to Stockley under his homestead entry. No charge whatever is presented in the bill against its validity, against the method in which it was perfected or against the verity of any of the proof necessary for its perfection. The bill meticulously avoids reference to homestead or other entry and as carefully as could be done refrains from disclosure that Stockley had ever attempted to initiate any claim under the public land laws. The bill treats the defendants as unlawful trespassers and, as shown by evidence and briefs, proceeds entirely on the theory that it was the decision of the Interior Department alone which caused Stockley to be without right in the premises. That is, the Government's suit is based upon the Secretary's order of cancellation, and not upon a judicial attack on Stockley's entry; and, necessarily, its case must stand or fall upon the effect of the Department's decision. If that order was a legal one, rendered within the power and jurisdiction of the Secretary, and

neither an arbitrary act nor based on error of law, the Government is entitled to a decree.

If, however, the Secretary had no jurisdiction in the premises, if his decision was rendered in contravention of established rules of law, if it were an arbitrary act or made without any evidence to sustain his findings, then it would be to discuss elementary propositions to argue that it is utterly void and of no effect in this suit. If such order be null, not effective as a cancellation, then the decree appealed from is wrong, and should be reversed.

But Section 7 of the act of March 3, 1891 (26 Stat. at L., 1095), provides:

**"After the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead \* \* \* laws, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him."**

As shown by the record, Stockley made his final proof on January 5, 1909, filed his "non-mineral affidavit," as required by law, on January 16, 1909, and on that date paid to the receiver of the local land office all fees and commissions required for consummation of the entry. Upon this final proof and final payment the receiver issued him his receipt (Record, p. 57) for the sums so paid. The making



of these proofs and the payment of all sums required by law was all that it was within the power of the entryman to do; the receiver's receipt issued thereunder was the final receipt to be issued under that entry.

The case thereafter underwent the usual investigation, with the result that after the expiration of over a year, it was found through departmental and field investigation that the entry was entirely regular, and the case ordered "clear-listed and closed as to the Field Service Division." (Record, p. 63.)

No further proceedings were had in the Department until **February 27, 1912, more than three years after the issuance of the receiver's receipt on final entry**, when the contest was directed (Record, p. 61), which terminated in the decision of the Secretary of the Interior upon which alone the Government relies as against the rights here asserted by Stockley under his homestead entry.

The statute above referred to was pleaded in the departmental proceedings as a denial of any right, power or jurisdiction to entertain such contest, but the Secretary overruled this contention (Record, p. 120), and proceeded, notwithstanding the statute, to entertain jurisdiction and to **cancel the entry, though receiver's receipt had issued on final entry more than two years before the initiation of the contest.**

It is the contention of appellants that this decision was utterly null; that the final entry remains unaffected thereby, and that Stockley has a complete equitable title under the statute which declares that he is "entitled to a patent

conveying the land by him entered, and the same shall be issued to him."

(a)

In *Lane v. Hoglund*, 244 U. S., 174, the Court, referring to the above-mentioned act of March 3, 1891, said:

"In the exercise of its discretion Congress has said that for two years after the entryman submits final proof and obtains the receiver's receipt the entry may be held open for the initiation of proceedings to test its validity, but that if none shall be begun within that time, it shall be passed to patent as a matter of course. Thus in a case like this where, according to conceded facts, no proceedings were begun within the prescribed period, there is no room for the exercise of discretion or judgment, but on the contrary, a plain duty to see that the entryman receives a patent."

Again (p. 177):

**"The statutes make it very plain that if, at the expiration of two years from the date of the receiver's final receipt there is no 'pending contest or protest' against the entry, its validity no longer may be called in question; \* \* \* The purpose to fix his right and to command its recognition is obvious."**

The reason for the passage of the act is clearly stated in *re Harris*, 42 L. D., 611, quoted at length in the *Hoglund* case:

"The records of this department disclose that, during several years preceding 1891, a very large

number of entries were suspended by the General Land Office on vague and indefinite suggestions of fraud or non-compliance with law, to await investigation by special agents of that bureau. These suspensions were so numerous and the force available for investigation was so insufficient as to create a practical blockade in the issuance of patents, to the serious prejudice of *bona fide* claimants under the public land laws \* \* \* The reports of this Department to the public land committees of the Senate and House of Representatives, concerning this legislation, and the debates of those bodies thereon leave no doubt of the purpose of Congress that said proviso should correct the hardship of this situation and provide against a repetition thereof."

Further in the opinion the Secretary refers to the act as having been "passed, primarily to rectify a past, and to prevent future abuses of the departmental power to suspend entries."

Commenting on the purpose of the act the Court proceeds:

"We think it certainly and unmistakably lays upon the Secretary of the Interior, as the head of the Land Department, a plain duty to cause a patent to be issued to a homestead entryman whenever it appears that two years have elapsed since the issue of the receiver's receipt upon the final entry, and that during that period no proceeding has been initiated or order made which calls in question the validity of the entry. In the exercise of its discretion **Congress has said that for two years after the entryman sub-**

mits final proof and obtains the receiver's receipt the entry may be held open for the initiation of proceedings to test its validity, but that if none shall be begun within that time, it shall be passed to patent as a matter of course. Thus in a case like this, where, according to the conceded facts, no proceeding was begun within the prescribed period, there is no room for the exercise of discretion or judgment, but, on the contrary, a plain duty to see that the entryman receives a patent."

No language could be plainer, and the undisputed facts in the case at bar lead to but one conclusion.

On January 16, 1909, after Stockley had made his final proof, and had paid all the law required of him for the completion of his title, the receipt was issued to him by the receiver (Record, p. 57). That this was "a receipt on final entry" can admit of no doubt.

Stockley had done and performed every act which he was called upon to perform to acquire a perfect title under the law and had paid everything which the law exacted of him to obtain such title. More, he could not do. He had then reached "that point of time when an applicant has done everything he is required to do in the premises."

*181 Fed., 760, Leonard v. Lennox.*

He had exhausted every condition and every charge imposed on him by law to the obtention of patent; the remainder of the proceedings was then left to the officials

of the Land Department. Over them Stockley had no control.

He had made preliminary entry, settlement, residence and cultivation, final proof and payment. He had finally discharged every burden incumbent upon him and he had a receipt from the receiver for all sums due on final entry.

At such stage in the process of acquiring title, the entryman becomes the equitable owner.

"A claimant to public land who has done all that is required under the law to perfect his claim, acquires rights against the Government, and his right to a legal title is to be determined as of that time \* \* \* upon the theory that by virtue of his compliance with the requirements, he has an equitable title to the land, that in equity it is his, and that the Government holds it in trust for him."

*255 U. S., 368, Payne v. New Mexico, and cases cited.*

See also *255 U. S., 489, Wyoming v. United States:*

"When a party has complied with all the terms and conditions necessary to the securing of title to a particular tract of land, he acquires a vested interest therein; is regarded as the equitable owner thereof, and thereafter the Government holds the legal title in trust for him."

No regulation of the Land Office, no rule of the Department could have imposed upon Stockley additional obligations or have taken away from him the rights granted by Congress.

"The words of the statute are direct and make it very plain that if, at the expiration of two years from the date of the receiver's receipt on final entry, there is no 'pending contest or protest' against the entry, its validity no longer may be called in question in the Land Department—that is to say, 'the entryman shall be entitled to a patent—and the same shall be issued to him.' The purpose to fix his right and to command its recognition is obvious. \* \* \* That purpose is to require that the right to a patent which, for two years, has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay \* \* \*. Of course, the purpose is not merely to enable the officers to issue the patent \* \* \* but to command them to issue it in the event stated—the words of the statute being, 'The entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him.'"

*255 U. S., 438 (442), Payne v. U. S. ex rel., Newton.*

(b)

But the Circuit Court of Appeals denied controlling effect to the act of March 3, 1891, on the ground (Record, p. 190) that the confirmatory provisions of the statute are not set in motion until the issuance of the final certificate by the Register of the local Land Office. In so holding the Court erred.

The reasoning of the Court was that until approval of the proofs and issuance of certificate as evidence thereof, there

is no "final entry"; and that, notwithstanding compliance by the entryman with every legal prerequisite, the receipt by the receiver for all sums due on final entry is not a "receiver's receipt on final entry" until the certificate is issued by the Register.

Such holding not only ignores the plain language of the statute, but its reasoning runs squarely counter to the very purpose of the act and to the reason and cause for its enactment.

For the effect of such decision is to make the running of the statute entirely dependent upon the will of land office officials who might indefinitely suspend issuance of certificate, and so defeat the object of the law (244 U. S., 181):

"for two years after the entryman **submits final proof and obtains the receiver's receipt**, the entry may be held open for the initiation of proceedings to test its validity; but that if none such be begun within that time it shall be passed to patent as a matter of course."

Such a situation as would result if the decision of the Circuit Court of Appeals were sustained was the very condition which the act in question was passed to prevent.

(See *Lane v. Hoglund*, *supra*, page 180.)

Following the decision in the *Harris* case, 42 L. D., 611, in which as fully discussed by this Court in the *Hoglund* case, the Secretary overruled previous holdings of his de-

partment that the statute had "no reference to proceedings by the United States, or its officers or agents" and did "not affect the conduct or action of the Land Department in taking up and disposing of final proof of entrymen after the lapse of two years mentioned in the act," instructions were issued (43 L. D., 332) as follows:

"Time, under the statute of limitation created by the proviso to Section 7 of the act of March 3, 1891, runs from the date of the issuance of the receiver's receipt upon final entry. There is no doubt that Congress chose the date of the receiver's receipt rather than of the certificate of the register as controlling, for the reason that payment by the claimant marks the end of compliance by him with the requirements of law. **It would be manifestly unjust to make the right to a patent dependent upon the administrative action of the register, subjecting it to such delays as are incident to the conduct of public business and over which the claimant has no control. Payment, of which the receiver's receipt is but evidence, is therefore, the material circumstance that starts the running of the statute, inasmuch as a claimant is and always has been entitled to a receipt when payment is made.**"

See also *re Judicak*, 43 L. D., 246; *re Crowther*, 43 L. D., 262.

Rulings of the Interior Department holding otherwise, some of which are among the cases cited in the opinion of the Circuit Court of Appeals, are without authority in the face of the statute and of this Court's statement of the reason, purpose and object of the law.



The act was intended as a statute of repose, making the expiration of two years from the final payment, which in turn marked the final act capable of performance by the entryman in the process of perfecting title, conclusive evidence of his right to patent. Within the two years from that date, the Department might investigate his claim, approve it or reject it, or order a contest; **but unless such claim be rejected, protested or contested within two years from the date of receipt for the sums due on final entry, the entryman is vested with absolute right to patent as owner.**

Any other meaning is distinctly repudiated by the decisions in *Lane v. Hoglund* and *Payne v. U. S. ex rel. Newton*.

All proceedings in the acquisition of title to the public lands of the United States are statutory and all acts passed by Congress under the exercise of its constitutional power are supreme. When Congress has said in plain language that the Department has only two years from the time receipt is issued to the entryman and his final performance of the acts necessary to obtain title, in which to examine the proofs and to approve or reject them, and that the failure of the Department to take action within that time shall vest a perfect title in the entryman, no executive officer of the United States can in any manner impair such entryman's title or interfere, directly or indirectly, with the operation of the controlling statute.

It is respectfully submitted that Stockley's title was good from and after January 16, 1911, and that any proceedings on the part of the Land Office thereafter taken toward the assailing of the title, were absolutely beyond the power of the Department; and any action therein had, wholly null and void.

(c)

**The running of the statute is not affected by the character of the land.**

Because the land was leased for oil development more than a year after final proof and because oil was produced thereunder and because the Secretary had held that the land was at the date of final proof valuable for its deposits of oil and gas, the Court below held that the confirmatory provision of the act of March 3, 1891, did not apply.

Later in this brief, we discuss the Secretary's decision and its conflict with the settled rule of law that by the term "mineral lands" is meant "**lands known at the time to be mineral**". But even though the land had been in the legal sense "mineral land" at the date of final proof, yet the bar of the statute nevertheless applies.

That statute contains no exceptions: not even fraud stays its effect.

*Payne v. United States ex rel. Newton, supra.*

In the exercise of its legislative power, Congress has said that for no cause can an entryman's title be assailed or af-

fectured in the Interior Department unless steps are therein taken within two years from date of the receiver's receipt on final entry.

If on account of fraud or perjury, or for any other illegality, or if on account of the mineral character of the land, the entry be subject to attack, such attack must, after the expiration of the two years, be made in the Courts through the means of regular judicial proceedings.

Of course, mineral lands are not subject to entry under the homestead laws, but that circumstance is irrelevant. An entryman is not entitled to perfect his entry, except after actual compliance with the statutory provisions relative to settlement, residence and cultivation. Yet it is settled that the bar of the act of 1891 applies, though there have been utter failure to comply and though proof have been made fraudulently or by perjury. The cause or reason for the illegality of the entry is immaterial. The statute is universal in its application and the Government is relegated to an action in the Courts to test the validity of any entry where two years has elapsed from issue of the receiver's final receipt without contest or protest in the Department.

This has been on several occasions held by the Department.

In *re Harris*, 28 L. D., 90, it was held that homestead entries of coal lands fall "within the confirmatory provisions of the proviso to the seventh section of the act of March

3, 1891, notwithstanding this element of irregularity or invalidity in said entries."

In *re Judicak*, 43 L. D., 246, the Commissioner had held land embraced in the homestead entry coal in character and required the entryman to elect to receive a limited patent with reservation of the minerals to the Government under penalty of suffering the cancellation of his entry. On appeal to the Secretary, this decision was reversed because no contest or protest had been initiated until the expiration of more than two years from the date of receiver's receipt on final entry.

"The bar of the statute of March 3, 1891, had then fallen and the Commissioner was without jurisdiction to order such action."

Accordingly, it was ordered that an unrestricted patent issue, and the earlier case of *Herman v. Chase*, 39 L. D., 590, in which it had been held that the statute did not apply to homestead entries of known mineral lands, was declared to be overruled.

See also instructions (43 L. D., 323).

These departmental decisions properly construe the act and no other construction is permissible consistently with the rulings of this Court in the *Hoglund* and *Newton* cases. For the statute makes no exceptions on the ground of character of the land or otherwise; it creates a full, complete and general confirmation, insofar as the power of the De-

partment is concerned, of all entries under the homestead laws through the lapse of two years from receiver's receipt on final entry where no adverse proceedings had been set in motion through contest or protest. The statute neither makes nor permits of exceptions.

(d)

**The Circuit Court of Appeals erred in holding that the confirmative effect of the act of March 3, 1891, was stayed by the Presidential withdrawal of December 15, 1908.**

For the same reason that the proviso of the act of March 3, 1891, is operative as against the contentions above noticed, its effect could not have been stayed for the other causes assigned by the Circuit Court of Appeals. That reason is that the statute is a clear and plain direction by Congress that for no cause may patent be withheld or entry affected by the Department unless adverse proceedings taken contradictorily with the entryman be initiated within the two years.

Plainly, though an executive withdrawal might be ground for refusing to permit a homesteader to make final entry or be ground for contest thereafter, yet the lapse of two years from receiver's receipt actually issued on final entry completes the statutory bar. An entry illegal because made in violation of executive order, is clearly no more illegal than one made in violation of Congressional enactment or

perfected through fraud or perjury; and yet neither for illegality nor for deliberate fraud can the jurisdiction of the Department to cancel be maintained unless set in motion by contradictory proceedings begun within the two-year term. Such is now settled jurisprudence; and for stronger reasons must the statute be given its confirmatory effect as against defects arising not out of violation of statutes or through fraud or false swearing, but from breach of departmental regulations and orders.

Consequently, if on December 15, 1908 (before which date Stockley by his entry, residence and cultivation was qualified to make final proof), the President had actually withdrawn this land, final entry thereafter made by Stockley in violation of such order would have been confirmed by the statute if two years had been permitted by the Department to lapse without contest or protest.

But the land was not so withdrawn.

The withdrawal order (Record, p. 48) issued by the Commissioner with the approval of the Secretary, was as follows:

"To conserve the public interests and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, are, **subject to existing valid claims**, withdrawn from settlement and entry, or other form of appropriation."

At the time of the withdrawal Stockley had made a formal legal entry of the land at the Land Office and had paid such fees and commissions as were then required. Moreover, he had lived upon the land and had cultivated it for more than the necessary five years; so that at the date of such withdrawal he had performed every act essential to the acquisition of title, except the making of final proof and the payment of the fees due on such final proof.

It is unnecessary to discuss the question as to whether the President could validly have affected Stockley's entry by a withdrawal, since the withdrawal itself specially excepted land held under existing claims. However, in this connection it is of interest to note that it has long since been held that a withdrawal of the land as against the homestead entryman standing in the position which Stockley then occupied, is beyond the power or authority of the executive.

In the opinion of Attorney General McVeagh (17 Opinions Attorney General 160) it was held:

"Where a homestead entry of public land has been made by a settler, the land so entered cannot, while such entry stands, be set apart by the President for a military reservation, even prior to the completion of full title in the settler; \* \* \* upon the entry the right in favor of the settler would seem to attach to the land, which is liable to be defeated only by failure on his part to comply with the requirements of the Homestead Law in regard to settlement and cultivation. This right amounts to an equitable in-

terest in the land, subject to the future performance by the settler of certain conditions (in the event of which he becomes invested with full and complete ownership); and until forfeited by failure to perform the conditions, it must prevail not only against individuals, but against the Government."

This ruling was quoted and approved in *Sturr v. Beck*, 133 U. S., 541.

This principle was borne in mind in the issuance of the withdrawal in question, which in explicit terms withdraws the public lands within certain townships from settlement and entry or other form of appropriation, **subject to existing valid claims**. No language could be clearer. The withdrawal saved and excepted all claims validly initiated and existing at the date of the withdrawal. And this word "claim" must have been advisedly used to cover in the broadest possible manner every possible assertion of right or interest in Government land.

That the homestead entryman by his entry and payment acquires a right, is the result of the authorities already cited and of such cases as:

*United States v. Waddell*, 112 U. S., 76, wherein the Court calls the homestead entry "an existing contract for the purchase of such land;" of

*Black v. Jackson*, 177 U. S., 349, where the Court refers to the homestead entry as "an inchoate title to the land;" and of



*Kansas Pacific Ry. Co. v. Dunmeyer*, 113 U. S., 169, in which the Court said that by the homestead entry "the inchoate right to the land was initiated" and "the right of homestead fastened to the land, which could ripen to a perfect title by future residence and cultivation."

Indeed the terms of the homestead statute, Section 2297, relative to failure to comply with the provisions of the act, do not stipulate that such failure **prevents** the entryman from acquiring title, but that such failure causes the land to **revert** to the Government.

In the *Dunmeyer case*, there had been granted to the Union Pacific Railway every alternate section of public land on each side of the railroad, "to which a pre-emption or homestead **claim** may not have attached." On July 25, 1866, the homestead entry was made. The line of definite location of the road was filed September 21, 1866. The homestead entry prevailed as against the railroad grant.

In *Black v. Jackson*, the Court said with reference to the right of the homestead entryman:

"It ought not to be assumed that he would put himself in such a position that he could not demand a patent. Although the inchoate legal title remains in the United States in trust for the person who may earn it, we think that in determining the value of the matter in dispute, we should look at the value of the land; not simply at the value of the right of present possession."

In the *Waddell case*, passing upon the constitutionality of Article 5508 of the Revised Statutes, under which the defendants were accused of conspiracy to deprive or hinder a citizen in the exercise of his right to establish claim to certain public lands under the homestead act, the Court said:

"By the original entry he acquires the inchoate but well defined right to the land after his possession, which can only be perfected by continued residence, possession and cultivation for five years \* \* \* It would indeed be strange if the United States \* \* \* cannot make a law which protects a party in the performance of his existing contract for the purchase of such land, without which the contract falls and the rights both of the United States and of the purchaser are defeated."

We cite these cases, not because it is necessary to discuss the question whether an executive withdrawal could validly have affected Stockley's homestead entry, but to show that the **claim** which attaches to the land by reason of the entry creates rights which the executive unquestionably intended to protect. The word "claim" is broad enough to cover any form of right or asserted right to land; but the entryman under the homestead laws possesses a real and substantial right, the force and effect of which was undoubtedly recognized by the Department in the framing of the withdrawal order in question.

The preliminary homestead entry even of **known** mineral lands, though subject to cancellation by the United States, so far segregates the land from the public domain and

makes it so far private property as to withdraw it from operation of the law permitting citizens to locate thereon.

*Mining Company v. United States*, 226 U. S., 550.

That Stockley's entry was a **claim**, that it was **validly made** and then existing, cannot be disputed. Indeed the Secretary's decision adjudging Stockley entitled to a "limited" (*i. e.* surface) patent is admission of the existing validity of his "claim." The Stockley entry, therefore, was an "**existing valid claim**," saved and reserved in itself from the operation of the withdrawal order.

Any contrary contention would appear to be in clear conflict with the decision of this Court in *United States v. Buchanan*, 232 U. S. 76, to the effect that **land embraced within a homestead entry is not "public land,"** since such entry "withdrew the land from entry and settlement by any other and segregated it from the public domain."

It is obvious that the particular tract of land on which Stockley was then living and which was the land entered by him was never withdrawn so as to prevent his completion and perfection of title. But if it had been so withdrawn, that fact would be immaterial in discussion of the operation of the statute.

In *Lane v. Hoglund*, 244 U. S. 174, the property covered by Hoglund's homestead entry was included within a na-

tional forest reserve by proclamation of the President issued before the expiration of the legal term of residence and which proclamation withdrew from entry all lands within the limits of such reserve, with the following exception:

"Excepting from the force and effect of this proclamation, all lands which may have been prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made."

In directing the cancellation of Hoglund's entry, the Secretary had found as a fact (43 L. D., 543):

"It is clear from the evidence that Mr. Hoglund was not complying with the provisions of the homestead law at and prior to May 6, 1905 (the date of withdrawal) and that he therefore could not continue to comply with such law. His compliance with the letter of the homestead statute began a year later, May 6, 1906, and, as stated, continued until August, 1907. It was taken then too late, however, to cure the default existing at the date of the withdrawal of the land for a public use, and under the law and terms of the proclamation, the reservation had attached."

Thus the entryman had lost, under the very terms of the proclamation, his right to proceed to perfect his entry and the effort to restore such right did not come until after the date of effective withdrawal. In fact, however, he did make final entry and received the receiver's receipt thereon, although under the terms of the withdrawal he had no legal right thereto.

For this reason, the Secretary denied effect to the act of March 3, 1891:

"Said statute is not operative in this case because the withdrawal for public use as a national forest attached to the land May 6, 1905, at a time when the entryman was not complying with the law, prior to the issuance of the receiver's receipt and certificate, upon the final proof offered August 1, 1907."

This Court, however, held that nothing was material except the **fact** of issuance of receiver's receipt, and lack of protest or contest within two years, since the **right** to make final entry could not be contested thereafter in the Department if such entry **in fact** had been made:

**"No importance attaches to the creation of the forest reserve after the primary and before the final entry. The entryman was free, under the terms of the President's proclamation, to proceed with the steps essential to obtain a final entry and ultimately the full title, and to such a final entry the statute, the provisions in paragraph 7, has the same application as if the land were without instead of within the reserve."**

On reason and authority, therefore, no importance can attach to the withdrawal order as affecting the issues of this case.

(e)

The Circuit Court of Appeals erred in holding that confirmation under the act of March 3, 1891, was stayed by the effect of instructions of the Commissioner of date December 15, 1908.

The same reasons and the same authorities impel the conclusion that nothing in any orders or instructions from the Commissioner to the local land officials could have prevented the confirmatory effect of the statute.

The Circuit Court of Appeals, however, gave such effect to a letter from the Commissioner (Record, p. 51) in which *inter alia* he advised the Register and Receiver at Natchitoches:

"\* \* \* Proofs based upon selections, settlements or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of land and compliance with the law in other respects."

However, Stockley **did** submit final proof and **did** pay all sums payable on final entry and **did** obtain a receipt from the Receiver therefor.

It is clear that such receipt did set the statute in motion, regardless of any instructions from the Commissioner forbidding the acceptance of the money. It is here again the **fact** of payment and receipt which is controlling.

Besides, it will be noted that the local officials were directed not to act in the perfection of the entry, not because of the withdrawal (for the withdrawal order itself excepted all existing valid claims) but in order that entries and proofs might be "suspended, pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects."

But it was precisely to put an end to just such practice of indefinite suspension that the proviso in the act of March 3, 1891, was enacted into law. This Court, in the *Hoglund* case (244 U. S., 180), has reviewed the history of the statute and the reason for its enactment and no doubt can exist that it was the effect of wholesale suspensions on vague and indefinite suggestions of invalidity which was the evil moving Congress to pass the law.

Issuance of receipt by the Receiver, therefore, necessarily started confirmation under the act whether such receipt issued in disregard of these instructions or not, for no rule or order of the Commissioner can avail as against the mandate of the law.

It may again be pointed out that the Commissioner does not purport to modify the effect of the exception in the

withdrawal order which saves "all existing valid claims," but directs suspension merely to permit investigation of the "validity of the claims."

But the law permits that character of investigation by the Department only when set in motion by contest or protest directed against the entryman within two years from receipt on final entry. Such receipt here issued, and after two years, departmental power wholly ceased.

No time need therefore be spent in discussion of the power of the Commissioner in the premises. The withdrawal order was the act of the Secretary of the Interior (Record, p. 49), considered in law as the act of the President himself (13 Peters, 513, *Wilcox v. Jackson*) and excepted all "existing valid claims." It is legally impossible to give to the act of his subordinate, the Commissioner of the General Land Office, the effect of nullifying the exception made by the superior officer.

In any case, the entryman was entitled as a matter of right to make final proof and payment and to obtain the receipt of the receiver on such final entry. But, regardless of rules or instructions, the statute has confirmed the title when the receipt actually issued and two years elapsed without contest.

## II.

**The orders of the Secretary of the Interior and of the Commissioner of the General Land Office, directing the**



cancellation of Stockley's entry, were illegal, null and void, the decisions of the local Register and Receiver sustaining Stockley's entry not having been appealed from.

On March 10, 1897, Stockley had established a residence upon the property in dispute, built a house, cultivated the land, and established a home for himself, his wife and child. On November 13, 1905, he made formal entry at the district land office and, on January 5, 1909, made his final proof, receiving the receipt from the Receiver on such final entry on January 16, 1909.

As to his good faith and compliance with the law, there can be no doubt. We quote from the Commissioner's finding of fact:

"There is nothing in the record to impugn the claimant's residence and cultivation under the homestead law, and there is no doubt that he settled on the land in good faith, for a home, in ignorance of possible value for oil and gas." (Record, p. 114.)

By his settlement, entry, cultivation, final proofs and payment, the entryman had done all that the law required of him, or that he could do, and his equitable title was complete from the date of his final proofs, unless there existed at that time some lawful reason for refusing to issue his evidence of title.

*9 Howard, 332, Lytle v. Arkansas.*

*128 U. S., 456, Cornelius v. Kessel.*

*159 U. S., 546, Weeks v. Bridgeman.*

*156 U. S., 537, Ard v. Brandon.*

*216 U. S., 571, Osborn v. Froyseth.*

*237 U. S., 365, Doran v. Kennedy.*

Nothing further transpired until February 27, 1912, when contest proceedings under the circular of January 19, 1911 (39 L. D., 458), were directed by letter "P." (Record, p. 61.) The charges upon which the contest was based were that the land was mineral in character and that the entryman knew at the time of final proof, or should have known, as a reasonably prudent man, that the land contained and was chiefly valuable for oil and gas.

The entryman answered; the salient averments of the answer being that his final proof was made in good faith and in ignorance of any possible mineral values; that there was nothing at that time on the land or from its location to indicate to him or to any other prudent man that the land contained deposits of oil or gas, and that the land had at that date no value to him other than as a farm and a home.

A hearing having been ordered on these charges, testimony was taken at Shreveport, the Government being there represented by a special agent and by the chief of the Field Division. The record being submitted to the Register and Receiver, the local officers concurred in a joint decision on March 1, 1913, in favor of the entryman. (Record, p. 107.) The decision was based upon the finding of fact that Stockley's entry was made and perfected in good faith and that at the date of final proof no oil or gas had been

discovered within five miles of his homestead; the nearest attempt at a well being a dry hole.

The result of the contest was that the contention of fact that the entryman knew, or should have known, that the land contained oil or gas at the date of final proof, was decided adversely to the Government. **No appeal was taken from this decision.**

By *ex parte* decision "N" of date December 22, 1913, the Commissioner (Record, p. 114) stating that Stockley's contention is "the sole question is: Was the land known to contain oil or gas prior to January 5, 1909?"—gave a negative answer to that question but proceeded to reverse the decision of the local officers upon the finding by him that the evidence showed that circumstances existed sufficient to put the entryman on notice at that date that his land contained such minerals. This decision was affirmed by the Secretary of the Interior (Record, p. 122), who though holding the lands to have been at date of final proof valuable for oil, likewise fails to find that they had that **known** character at such date.

That is, in the absence of any appeal, the Commissioner reversed the joint decision of the Register and Receiver and ordered the cancellation of the homestead entry which had been sustained by the decision of the local land office.

Appellants contend that such orders of the Commissioner and of the Secretary are absolutely null.

The circular of January 19, 1911, under authority of which alone said contest was had, provides:

"14. The above proceedings will be governed by the rules of practice." 39 L. D., 459.

Rule 51 of the rules of practice provides:

"When any party fails to move for a new trial, or to appeal from the decision of the Register and Receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the Register and Receiver."

*39 L. D., 404.*

It is not pretended in the instant case that there exists any fraud or gross irregularity, and the decision of the local office was the joint decision of the Register and Receiver.

In holding the surrounding circumstances were such as to put Stockley on notice that his land was oil bearing, the Commissioner therefore reversed the concurrent decision of the district land officers, not for fraud nor for gross irregularity, but solely and alone upon what he held to be a question of fact under his theory of the law applicable; but this, under the rules and the authorities, he was powerless to do in the absence of an appeal.

"Neither the general jurisdiction or the supervisory power of the Commissioner, or of the Secre-

tary, is arbitrary or unlimited. The effective exercise of each is conditioned by established rules of law. **The settled rules and practice and the uniform decisions of the Department constitute both rules of law and of property, and equitable titles in entrymen cannot be destroyed by the Land Department in violation of them.** System, order and the uniform application of the established rules and practice of the Department to all litigants alike are essential to the administration of justice in the Land Department as in the Courts. What a farce the attempt to secure or protect rights in any judicial or *quasi* judicial tribunal must become if its rules and decisions are ignored or applied to each case as it arises at the arbitrary will of the officer who presides. **Equitable titles of claimants to lands under the acts of Congress may not be annulled by the Land Department in violation of its settled practice, or of a rule of law and of property established by a long rule of decisions of its officers nor without legal notice to the parties in interest and an opportunity to be heard."**

*Howe v. Parker*, 190 Fed., 757, 111 C. C. A., 466.

It is the settled jurisprudence that the power of the Commissioner to review the action of the Register and Receiver is not "an unlimited or an arbitrary one."

128 U. S., 456, *Cornelius v. Kessell*.

190 U. S., 309, *Cosmos Exploration Co. v. Gray Eagle Oil Company*.

The power, then, is subjected to some limitation; one being that it shall not be arbitrarily exercised. It follows that the reviewing power must be exercised "within the settled rules of procedure established by the Department in respect to such matters."

*Love v. Flahive*, 205 U. S., 199.

*Germain Iron Co. v. James*, 89 Fed., 811; 32 C. C. A., 348.

*James v. Germain Iron Co.*, 107 Fed., 597; 46 C. C. A., 476.

What then were the rules by which the Commissioner was bound?

Rule 14 of the circular of January 19, 1911, under which the contest was tried, provides: "The above proceedings will be governed by the rules of practice."

39 L. D., 459.

Under the rules of practice a concurrent ruling of the district officers can be reversed only by appeal, except in case of fraud or gross irregularity. (Rule 51.)

39 L. D., 404.

That an appeal by the Government is necessary to reverse a decision in favor of the entrymen clearly appears from Rule 13 of the circular of January 19, 1911: "The special agent will not file any appeal or brief unless directed to do so by this office, or the chief of the Field Division."

In this connection, the record shows that Mr. E. D. Sanford, the chief of the Field Division, was present during the taking of part of the testimony, and took no appeal.

Since arbitrary power is denied to the Commissioner and the entryman has the right to have his cause adjudicated pursuant to settled rules of procedure, it is submitted that the action of the Commissioner was null, as an arbitrary and unwarranted exercise of power.

The present Rule 51 was Rule 48 of the old rules of practice. Rule 48 provided, that in the absence of appeal, the joint decision of Register and Receiver could be reversed only in case of fraud or gross irregularity, or "where the decision is contrary to existing laws or regulations."

In the revision of the rules the last-named exception was dropped, so that even for error of law the decisions of the Register and Receiver cannot now be reversed, except by appeal. The rules now in force, being framed and intended to cover the whole subject of the practice in land matters, repeal and supersede all former rules (*The Habana*, 175 U. S., 685), and cases therein cited.

But the decisions are clearly to the effect that the Commissioner would have had no power to reverse the finding of the local officers made in favor of Stockley even under old Rule 48, which gave him much broader powers than he has under the present Rule 51.

1 L. D., 467, *Brown v. Jefferson*.

5 L. D., 585, *McSherry v. Gildea*.

8 L. D., 30, *Central Pacific Ry. Co.*

11 L. D., 300, *Farris v. Mitchell*.

*13 L. D., 686, Swims v. Ward.*

*14 L. D., 231, Hazard v. Swain.*

*18 L. D., 409, Hobbs v. Goulette.*

*7 L. D., 98, Lindgren v. Boo.*

*15 L. D., 37, Rea v. Stephenson.*

These cases establish the settled jurisprudence of the Department that, **as between the parties to any contest**, the joint decision of the Register and Receiver can be reversed only pursuant to the rule, and wholly deny the power of the Commissioner to modify such decision except under such regulation.

Of course, a decision between individuals is not binding upon the United States, for the Government is not a party to contests between private parties. On this principle it was established at an early date that the Commissioner should, in the matter of controversies **between private parties**, examine the record in all cases, whether appealed or not, to determine the rights **between the successful litigant and the United States**. This duty clearly flowed from the general administrative power over land matters possessed by the Land Department.

*7 L. D., 20, Dovenspech v. Dell.*

*5 L. D., 245, Morrison v. McKissick.*

*6 L. D., 98, Southern Pacific Ry. Co. v. Saunders.*

*6 L. D., 249, Freeman v. Central Pacific Ry.*

*21 L. D., 294, Davis v. Fraser.*

The last cited case concisely states the basis of these decisions to be that in a contest between individuals, the fail-



ure to appeal eliminates the unsuccessful party, leaving the case "to be considered by the office between the successful party and the Government."

But here the United States was a party to the proceedings, in fact was the contestant. The United States was the plaintiff, Stockley, the defendant; and, after contest, answer and issue joined, evidence was adduced by both parties, the case submitted, and judgment rendered. The contest was instituted under rules providing for appeals under the rules of practice, and under those rules, the United States, **as a party**, was bound by the decision of the District Land Office, unless it appealed. The Government had had its day in Court as a litigant, and could avoid the consequence of an adverse decision only by compliance with the rules of practice which apply alike to all litigants and which rules are expressly declared by the circular of January 9, 1911, to govern contests instituted under its provisions.

In the cases cited by the Government, the United States was not a party, hence not bound. Here the United States was the unsuccessful contestant, and the rules in terms provide the only manner in which it could secure a reversal.

Nor is there anything to the contrary in the case of *George W. Dally* (41 L. D., 295). There, proceedings had been instituted under a special agent's report. The Register and the Receiver being disqualified, the Commissioner had designated two special agents to sit in their stead. The

contest resulted in the sustaining of the Government's charge, the entryman appealed, assigning as error the want of jurisdiction in the Land Department to render any judgment, for the reason that there was no judgment of the local officers, claiming the designation of the special agents to sit in the case to be beyond the power of the Department. The Secretary held that these officers were properly appointed under the act of January 11, 1894, and that, therefore, a decision by the Register and Receiver was not essential to his jurisdiction, since the special agents properly acted in place of the local officers. It was further held that under the statutes, the Commissioner had the power to make rules under which a decision of the Register and Receiver could be dispensed with, the evidence merely being taken and sent up for decision. **But it was never held that where the local officers did hear the case, under the rules of practice, their decision could be modified, except under those rules.**

It is, therefore, respectfully submitted that all proceedings rendered in the Land Department subsequent to the decision of the Register and Receiver sustaining Stockley's entry, are absolutely null.

### III.

**The decisions of the Secretary of the Interior and of the Commissioner of the General Land Office are null, as being based entirely upon errors of law.**

It is elementary that the conclusive effect of a decision of a departmental tribunal is only as to the **facts** found.

Such decisions may be examined for errors of law, and such errors render them wholly void.

The question, therefore, is whether the decision purporting to cancel Stockley's entry was or was not erroneous as a matter of law.

This involves two propositions:

(a)

**What constitutes mineral lands within the meaning of the public land laws?**

Section 2302 of the Revised Statutes provides:

"No distinction shall be made in the construction of execution of this chapter, on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions."

The provisions referred to are those relating to the acquisition of land under the homestead acts.

The meaning of this act, however, is no longer open to interpretation since it has been long since settled that the term "**mineral lands**" means land "**actually known at the time of final proof to be valuable for minerals.**"

In *Deffeback v. Hawke*, 115 U. S., 392, Mr. Justice Field, delivering the unanimous opinion of the Court, said:

"It is plain that no title from the United States to land known at the time of sale to be valuable for

its minerals can be obtained under the pre-emption or homestead laws or in any other way than as prescribed by the laws specially authorizing the sale of such lands. \* \* \* We say 'land **known** at the time to be **valuable** for its minerals' as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral' in the sense of the statute is applicable. \* \* \* We also say lands **known** at the time of their sale to be thus valuable in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which years afterwards rich deposits of minerals may be discovered."

Again, in *Davis v. Weibbold*, 139 U. S., 507, the matter received the most thorough consideration in an opinion in which after reviewing the authorities, it was settled that such exceptions apply only "to known mineral lands." Also see the various cases cited in that case.

In the cases of *Jas. L. Jacobs, et al.*, 7 L. D., 570; *Rea v. Stephenson*, 15 L. D., 37; *Arthur v. Earle*, 21 L. D., 92, the Interior Department held that **the condition of the land as respects its known mineral character at the time of final proof was determinative of the rights of the homesteader to his patent.**

But neither the Commissioner nor the Secretary hold that Stockley's land was known to contain oil or gas on or prior to final proof; both rely for proof of its mineral character on facts subsequently developed and on circumstances

connected with discoveries on other lands which the Commissioner says "were sufficient to put Stockley on notice of the character of his own land."

But in *Colorado Coal & Iron Company v. United States*, 123 U. S., 307, the Court held that a pre-emption entry could not be invalidated by proof of "indications of coal beds or coal fields or greater or less extent or value as shown by outcroppings." "We hold," say the Court \* \* \* "there should be **upon the land** ascertained coal deposits of such extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. The circumstances that there are surface indications of the existence of veins of coal does not constitute a mine. It does not even prove that the land will even be under any conditions sufficiently valuable on account of its coal deposits to be worked as a mine. \* \* \* If upon the premises at that time there were not actual known mines capable of being profitably worked for their product, so as to make the land more valuable for mining than for agriculture, a title to them acquired under the Pre-emption Act cannot be successfully assailed."

To the same effect see *United States v. Iron Silver Mining Company, et al.*, 128 U. S., 673 (32 L. Ed., 575), where, in considering the exception of lodes from placer-mining location, the Court said:

"It is not enough that there may have been some indications by outcroppings on the surface, of the existence of lodes or veins of rock in place, bearing

gold or silver or other metal, to justify their designation as 'known' veins or lodes. To meet the designation, the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account \* \* \* The subsequent discovery of lodes upon the ground, and their successful working, does not affect the good faith of the application. **That must be determined by what was known to exist at the time."**

Such are also the uniform rulings of the heads of the Interior Department. In *Davis v. Weibbold*, the Court cited with approval the decision of Secretary Teller in *Dughi v. Hawkins*, 2 L. D., 721, and the decisions of Secretary Lamar (following this case) in *Cleghorn v. Bird*, 4 L. D., 478, and *County Commissioners v. Alexander*, 5 L. D., 126.

In *Dughi v. Hawkins*, there was a contest between mineral and agricultural claimants, the latter relying on a homestead entry. Thus the question was identical with that here under consideration. The Secretary held:

"The burden of proof is therefore upon the mineral claimant, and he must show, not that neighboring or adjoining lands are mineral in character, or that that in dispute may hereafter by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, but that, **as a present fact**, it is mineral in character and this must appear from actual production of minerals \* \* \* **in other words, it is fact and not theory which must control your office in deciding upon the character of this class of lands."**

In *County Commissioners v. Alexander, supra*, Secretary Lamar said:

"It has been repeatedly held by this Department that the proof of the mineral character of land must be specific and based upon the actual production of mineral; that it is not enough to show that neighboring or adjoining lands are mineral in character \* \* \* but it must be shown as a present fact that the lands are mineral and this must appear from the actual production of mineral and not from a theory that the land may hereafter produce it."

Finally, the question of what constitutes land chiefly valuable for oil or gas was put beyond all controversy in *Chrisman v. Miller, 197, U. S., 321*.

It was there held in a controversy between rival claimants to a placer mining location (where the rule is declared by the Court to be more liberal than where "land is sought to be taken out of the category of agricultural lands" to defeat a homestead entry) that nothing short of actual discovery of oil on the premises would establish its mineral character.

The case of *Diamond Coal & Coke Company v. United States, 233 U. S., 236*, must be construed in the light of the facts disclosed in the opinion. That case was a suit by the Government to cancel a patent issued under the homestead laws, on the ground of fraud and perjury, the Government charging that the defendants knowing the land in question to be coal land and, pursuant to a deliberate plan to defraud, conspired to acquire coal land under the homestead laws.

The testimony showed that the coal stratum outcropped on the adjacent tract and that there were established coal mines in strata on adjacent lands paralleling such outcrop.

"These conditions were open to common observation, and were such as would appeal to practical men, and be relied upon by them in making investments for coal mining. \* \* \*

"There is no fixed rule that lands become valuable for coal only through its actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding or external conditions.

"It will be perceived that we are not here concerned with a mere outcropping of coal with nothing pointing persuasively to its quality, extent or value; **neither are we considering other minerals whose mode of deposition and situation in the earth are so irregular or otherwise unlike coal as to require that they be dealt with along other lines.**"

It will, therefore, be seen that this case stands by itself and that its rule can apply only to coal lands for the reasons stated in the opinion because the outcropping of a workable seam of coal on an adjacent tract of land, with evidence that the vein so dipped as to go under the land homesteaded, was proof of the existence of coal under the land entered pursuant to a conspiracy to obtain coal lands under homestead entries. Such reasons are wholly wanting in the case at bar.



That in cases where homestead entries are involved, the question as to whether the land was in the legal sense known mineral lands at the date of final proof is determinative, is settled jurisprudence.

In *Wyoming v. United States*, 255 U. S., 489, the Court said:

"As respects cash entries under the pre-emption, homestead, desert land, and kindred laws, the Land Department always has ruled that if, when the claimant has done all that he is required to do to entitle him to receive the title, the land is not known to be mineral, he acquires a vested right which no subsequent discovery of mineral will divest or disturb."

Again, quoting from a departmental decision:

"In the disposition of the public lands of the United States, under the laws relating thereto, it is settled law:

"1. That when a party has complied with all the terms and conditions necessary to the securing of title to a particular tract of land, he acquires a vested interest therein, is regarded as the equitable owner thereof, and thereafter the Government holds the legal title in trust for him;

"2. That the right to a patent, once vested, is, for most purposes, equivalent to a patent issued, and when in fact issued, the patent relates back to the time when the right to it became fixed; and

"3. That the conditions with respect to the state or character of the land, as they exist at the time when all the necessary requirements have been com-

plied with by a person seeking title, determine the question whether the land is subject to sale or other disposal, and no change in such conditions, subsequently occurring, can impair or in any manner affect his rights."

And, further, quoting from *Leonard v. Lennox*, 104 C. C. A., 296, 181 Fed., 760:

**"The character of the land, whether agricultural or known to be chiefly valuable for coal, must be determined according to the conditions existing at the time when the applicant does all that he is required to do to entitle him to a patent \* \* \*. Whilst it (the entry) undoubtedly is subject to examination and consideration by them (the officers of the Land Department) this is not that they may elect whether or not they will consent to its allowance, but that they may ascertain whether or not the applicant has acquired a right to its allowance, a right which is acquired, if acquired at all, at that point of time when the applicant has done all that he is required to do in the premises, instead of at the time of its recognition by them."**

In *Payne v. New Mexico*, 255 U. S., 438, it was again said by this Court:

**"In the brief for the officers it is frankly and rightly conceded to be well settled that 'a claimant to public land who has done all that is required under the law to perfect his claim acquires rights against the Government, and that his right to a legal title is to be determined as of that time.'"**

It, therefore, being settled law that the status of the entryman's rights under the homestead law is to be determined as of the date of final proof and equally settled law establishing that by the term "mineral lands" is meant in the public land law "lands actually producing mineral," the Department was wholly without right to cancel Stockley's entry because of facts subsequently developing or because of a finding that developments in the township "were sufficient to put him on notice of the character of his own land."

Such decision—even if the jurisdiction of the Department had not been lost under the act of March 3, 1891—was wholly erroneous in law and, therefore, void. For, if the Department had had jurisdiction it was limited to the ascertainment of the fact, whether at the date of final proof the land was "known" to be valuable for oil or gas.

(b)

**Was the decision purporting to cancel Stockley's entry rendered without any evidence to sustain its finding of fact?**

Whether or not there be any evidence to sustain the charge or finding is, in every judicial or quasi-judicial tribunal, a question of law. And a finding and judgment rendered without any evidence to support it is an arbitrary act.

It is undoubted that where it is contended that an order whose enforcement is resisted was rendered without any

evidence upon which it might rest, the question involves not an issue of fact, but one of law.

*234 U. S., 185 Railroad Co. v. U. S.*

In *Interstate Commerce Com. v. L. & N. Ry. Co.*, 227 U. S., 81, the Court says:

"A finding without evidence is arbitrary, and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority \* \* \* is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that **administrative orders**, quasi-judicial in character, **are void** if a hearing was denied; if that granted was inadequate or manifestly unfair; if the **finding was contrary to the 'indisputable character of the evidence'**; \* \* \* or if the facts do not, as a matter of law, support the order made."

In addition to the numerous authorities cited, see:

*Bailey v. Sanders*, 228 U. S., 605.

*Howe v. Parker*, 190 Fed., 746 (111 C. C. A., 466).

both of which apply this doctrine to decisions of the Department of the Interior.

Hence, if the Department had had jurisdiction and if it were sufficient to justify the Department in cancelling a homestead entry that "developments in the vicinity" "were sufficient to put the entryman on notice of the (mineral) character of his own land" the question whether the record presented any evidence to sustain the finding of fact is a legal one, examinable by the Courts.

It becomes necessary, therefore, to state all the evidence.

This consists entirely of the testimony of the Government witnesses, Pyron, Webster, Thomas and Guy; of the entryman and his witnesses, Bell and Vaughan, and of Bulletin No. 429 of the Geological Survey of 1910, offered in evidence by the Government.

As regards the question at issue, the following is an accurate and complete summary of the evidence. (Record, pages 65, *et sequitur*):

**Pyron** (represents the Gulf Refining Company of Louisiana, one of the largest operators in the Caddo field):

"His company had no information that would have led it to believe on January 5, 1909, that the Stockley land contained oil or gas, and his company was in position to know as much about this land as was any of the operators in the field. At the date mentioned no operators were taking leases within a radius of two miles of the Stockley homestead (p. 68).

"On January 5, 1908, 'there were a very few little wells just west of Oil City (in Section 12, Township 20 N., Range 16 W., a dry hole, drilled by the Atlanta Oil & Gas Company.' The geological formation in the territory just west of Oil City is entirely different from that in the Stockley tract; the oil sands are different in character, and entirely different grades of oil are found in the two territories at approximately the same depth (p. 70). In the Oil City district the oil is black and heavy, while around the Stockley land it is a brown oil of light gravity. The oil-bearing stratum of the Oil City region does not extend across Jeems Bayou on to the Stockley tract. There existed no reason for a practical oil man to believe, on January 5, 1909, that the oil-bearing stratum of the Oil City district continued across Jeems Bayou and under the Stockley tract (p. 71).

**"On January 5, 1909, the nearest oil well or gas well was about three miles east of the Stockley homestead.** Does not know that there are any surface indications of oil or gas on the land in question. It is hill land, with a sandy soil and with some oak and some pine timber (p. 72).

(Cross-examined).

"The first development of any consequence west of Jeems Bayou was the drilling of the Trees Company's well No. 4, in Section 27, Township 21 North, Range 16 West, about **November 10, 1909.** Just prior to the completion of this well the Trees Company had offered to sell to witness' company their entire holdings, consisting of four to five thousand acres of leases several miles north of the Stockley

land, for less than the expenditure the Trees Company had incurred in drilling on the land. **Witness' company refused this offer because it did not consider the entire property worth what had been actually invested therein in drilling.** (p. 73.) These Trees Company leases embraced practically all of Township 21 N., Range 16 West, lying west of Jeems Bayou. This subsequently proved to be very productive territory and was afterwards sold to the Standard Oil Company at a very large price. (p. 73.) On January 5, 1909, there were no indications of oil or gas such as to put an ordinarily prudent person on notice that the Stockley land was valuable for oil or gas (p. 75)."

**Webster** (has been a lease-man in the Caddo field for the Gulf Refining Company of Louisiana for five years and during that time has been intimately acquainted with the oil and gas developments in this field (p. 76) :

"On January 5, 1909, there had been no development such as to indicate that oil or gas might be discovered on the Stockley tract. There were some producing wells and some dry holes west of Oil City. **The nearest well was about three miles east of Stockley.** At that date there had been no discovery of oil or gas within two miles of Stockley's homestead. The first well west of the bayou was the Trees well, considerably to the north and east of this land. **Witness' company leased no land west of Jeems Bayou or within two miles of the Stockley tract until after the Trees well came in.** The first lease in that territory was the Burr lease in Texas, which was executed after the Trees well came in.

(Mr. Pyron had fixed the date of Burr lease as in November, 1909. (p. 67.)

"There was nothing to indicate on January 5, 1909, that the Stockley tract was underlain with oil or gas. The only real test of the oil and gas character of land is to drill.

(Cross-examined).

"The Rives land, being the north half of the north-east quarter of Section 5, Township 20 North, Range 16 West, which adjoins the Stockley land on the north, was offered witness' company in the early part of 1909 for one dollar per acre, and refused for the reason that company had no faith in it; did not think there was any oil in that territory. (p. 79.)"

**Thomas** (in charge of the land department of the Producers' Oil Company at Shreveport) (p. 96):

"The first wells drilled west of Jeems Bayou were in March, 1910. (p. 97.) There was no drilling in the vicinity of the Stockley land on January 5, 1909. (p. 97.)"

**Guy** (engaged in the oil business in Shreveport, and has been thoroughly familiar with developments in the Caddo field since its inception):

"Considered in 1910 that Stockley's land had mineral possibilities but refused to take a lease on it then because he couldn't handle it. 'I would not drill it. I did not want it.' There were no developments anywhere near the land in 1909. (p. 99.)

6

1



6  
2

"The drilling at that time was several miles to the north, on the Trees property. Does not think that oil or gas had been discovered west of the bayou prior to January 5, 1909. The nearest producing wells at that date were near Oil City and three or four miles from this land. These developments did not, at that time, indicate to a practical oil man that the oil-bearing stratum underlaid the Stockley tract. As a matter of fact, a great deal of land between, which has since proven productive, was at that time 'condemned territory.' (p. 99.)"

The above was the entire showing made by the Government, and the testimony so adduced not only fails to establish the charges made, but conclusively establishes the fact that there existed no reason on January 5, 1909, for suspecting the property in dispute to be oil or gas land.

The testimony on the part of the defendant, consisting of the evidence of W. W. Bell, Thomas J. Stockley and George M. Vaughan, all disprove the mineral character of the land and confirm the good faith of Stockley in carrying out and perfecting his entry. For instance, Stockley testifies on cross-examination (p. 94):

Q. Mr. Stockley, had anyone approached you for the purpose of leasing your land, before you made final proof?

A. No, sir, they had not.

Q. Did any oil man ever tell you that your land possibly contained oil or gas?

A. No, sir, never did.

Q. Before you made final proof?

A. No, sir, nothing about it at all. I went on it as I said a while ago for a home, that is what I went on it for. I did not know anything about oil wells, no oil wells on that side of the lake then, even when I made my final proof.

Q. Had any oil or gas been discovered west of Jeems Bayou or Ferry Lake before you made final proof?

A. No, sir, not that I know of at all; the nearest was at Oil City that I knew anything of.

Comment on the testimony cannot make stronger our complaint that the Commissioner's holding to the contrary was wholly arbitrary.

And there is nothing in Bulletin No. 429, to which the Commissioner refers, that does not wholly accord with the testimony of the witnesses.

We call attention first to the map of the Caddo oil field, made in the early part of 1909, and printed in the bulletin (p. 126). This map shows the extreme western edge of the field to be the western line of Sections 1 and 2, Township 20 North, Range 16 West. **This is three and one-half miles east of Stockley's land.**

On page 130 appears the statement that "small quantities of heavy oil are found in the Nacotoch sand, west of Jeems Bayou, in Sections 27 and 22. Three wells furnish about 85 barrels daily." That is, the only discovery west of the bayou consisted of three wells with a total produc-

tion of 85 barrels of **heavy** oil (the territory including the Stockley land produces only **light** oil) in the **shallow** sand (all the production on the Stockley land and adjacent lands is in the **deep** sands), and these wells were in Sections 22 and 27, Township 21 North, Range 16 West, whereas the Stockley land is in Sections 5 and 8, Township 20 North, Range 16 West, over three miles to the southwest. It was precisely because the Trees Oil Company had succeeded in the early part of 1909 in securing **heavy** oil only in considerable quantities, that it was unable to dispose of its large holdings at the actual cost of development.

The above is the full extent of the relevant statements in the bulletin referred to, and written before the date of Stockley's final proof.

But on pages 132-135 Dr. David T. Day adds a supplement to the preceding report, covering developments west of Jeems Bayou since its submission. In this supplement it is stated that "recent developments on the west side of the Caddo field have entirely changed the economic conditions." That this change began with the completion of the Trees Company's No. 4 on November 12, 1909, (just as was testified to by the witnesses). Work at deepening this well, which was "an experimental effort to test the deep sands," began only during July, 1909. It was after the bringing in of this well in November, 1909, that the Gulf Refining Company began drilling its Burr well, completed in March, 1910, referred to by the witnesses as being the first productive well in the vicinity of the Stockley land. A

list of the producing wells brought in since the previous report is found on pages 134 and 135, giving the date of each completion, and a complete list of oil and gas wells is given on pages 139-149, inclusive; from which list it will be seen that the nearest gas wells on January 5, 1909, were in Sections 1, 11, 12 and 13, Township 20 North, Range 16 West, **from three to four miles to the east and across the lake.**

But, after reading the bulletin, the Commissioner falls into the error of viewing the case from the knowledge obtained from subsequent developments instead of from the facts **known to exist at final proof.** He says: "The early wells on both the Stiles and the Burr properties are described in Bulletin 429 at page 132." And then, overlooking the fact that this reference shows the completion of the first important well on the Stiles tract to have been **on November 12, 1909, and the beginning of the work on the Burr tract thereafter,** the Commissioner concludes that final proof was not made "until the oil companies were becoming active in their developments in his vicinity." But these developments did not begin until late in 1909 (work of deepening the Stiles well was in July), while Stockley's final proof was made on the 5th day of January.

The same observations apply with equal force to the reference to gas discoveries. Bulletin 429 shows that no gas had been discovered within three miles of the land upon the date which determined Stockley's rights. The Gilbert

well, referred to in the decision, was more than four miles, and the Producers' Nos. 2 and 3 wells (see p. 136), over three miles to the east.

In view of the entire absence of any evidence to sustain a finding that "developments" were sufficient to put him (Stockley) on notice of the mineral character of his land on the date of his final proof, and of the concurrent testimony of the witnesses for the Government and for the entryman that there were no evidences of such character at that date, and, in view of the complete corroboration of that testimony by the bulletin of the Geological Survey, we submit that the Secretary's, as well as the Commissioner's decision, is as much without foundation in fact as they are both without support in law.

#### IN CONCLUSION.

It is respectfully submitted that, for all the reasons hereinabove discussed, the judgment appealed from is erroneous, and should be reversed, and the Government's bill dismissed.

Respectfully submitted,

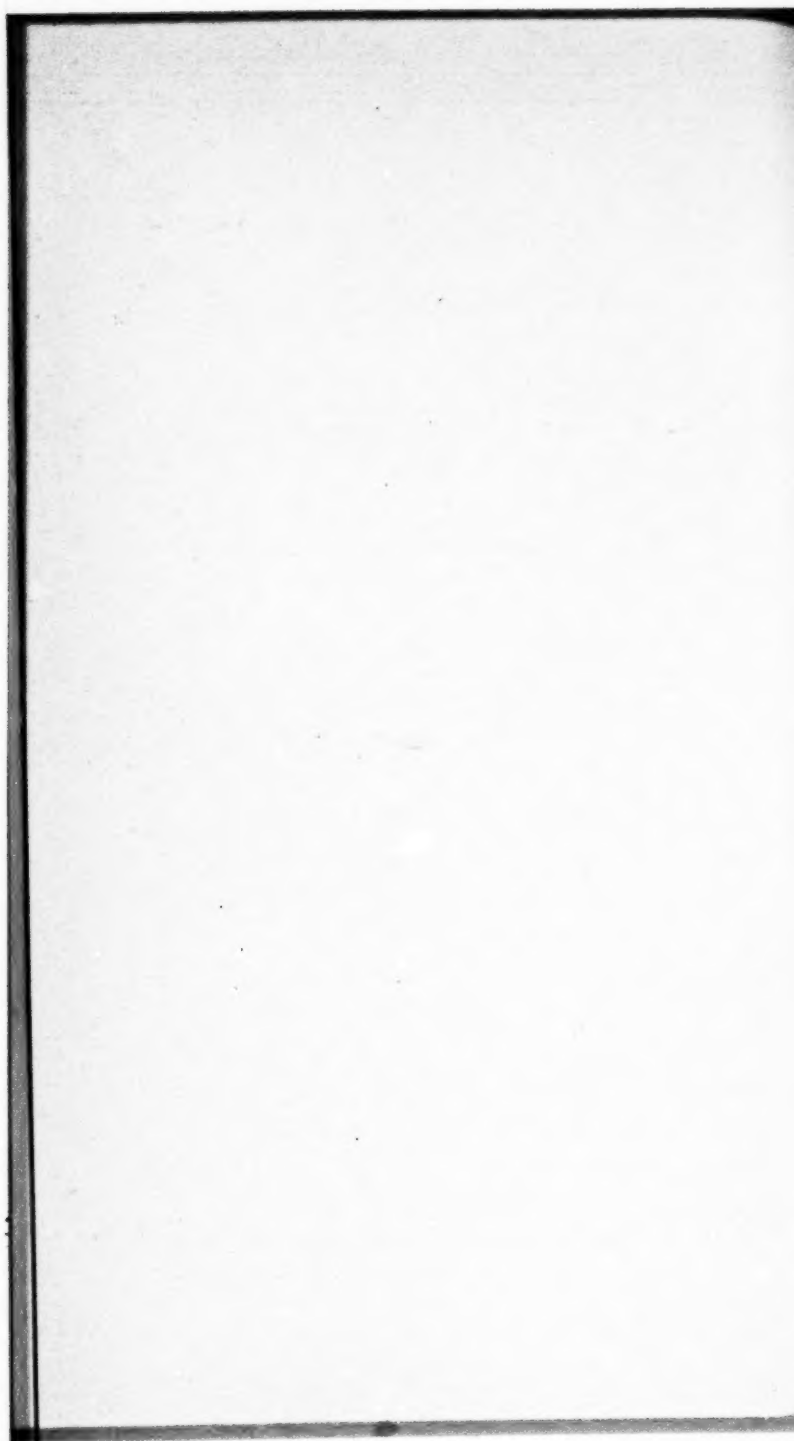
R. L. BATTS,  
D. EDWARD GREER,  
S. L. HEROLD,  
Solicitors for Appellants.

# INDEX

	Page.
Statement.....	1
The receipt issued was not a receiver's receipt upon final entry within the meaning of the proviso in §7 of the act of March 3, 1891, 26 Stat. 1098.....	6
The contention that the action of the commissioner in reversing the register and the receiver is void because the Government failed to take a formal appeal from their decision is without merit.....	19
The contention that no evidence was adduced at the hearing before the local land officers to justify a finding that the tract in question is mineral land is devoid of merit.....	20
Independently of the nature of the testimony before the local land officers, the finding of the Land Department as to the character of the land is conclusive and unassailable.....	27

## CASES.

<i>Barden v. Northern Pacific R. Co.</i> , 154 U. S. 288.....	27
<i>Bothwell v. Bingham County</i> , 237 U. S. 642.....	14
<i>Burke v. Southern Pacific R. Co.</i> , 234 U. S. 669.....	27
<i>Cameron v. United States</i> , 252 U. S. 450.....	27
<i>Duffield v. Chemical Co.</i> , 198 Fed. 942.....	27
<i>Earl v. Morrison</i> , 39 Nev. 120.....	27
<i>Gage v. Gunther</i> , 136 Cal. 338.....	19
<i>Guaranty Savings Banks v. Bladow</i> , 176 U. S. 448.....	11
<i>Hawley v. Diller</i> , 178 U. S. 481.....	19
<i>Kirk v. Olson</i> , 245 U. S. 225.....	19
<i>Knight v. U. S. Land Ass'n</i> , 142 U. S. 161.....	19
<i>Lane v. Cameron</i> , 45 App. D. C. 404.....	27
<i>Lane v. Hoglund</i> , 244 U. S. 174.....	6
<i>Le Fevre v. Amonson</i> , 11 Idaho, 45.....	27
<i>Love v. Flahive</i> , 205 U. S. 195.....	19
<i>Nevada Exp. Co. v. Spriggs</i> , 41 Utah, 171.....	27
<i>Orchard v. Alexander</i> , 157 U. S. 372.....	19
<i>Parsons v. Venzke</i> , 164 U. S. 89.....	8, 10
<i>Payne v. Newton</i> , 255 U. S. 438.....	6
<i>Pleated v. Abbey</i> , 228 U. S. 42.....	19
<i>Steel v. Smelting Co.</i> , 106 U. S. 447.....	27
<i>United States v. Detroit Lbr. Co.</i> , 200 U. S. 321.....	11
<i>United States v. Southern Pacific</i> , 251 U. S. 1.....	21
<i>Wisconsin Cent. R. Co. v. Price County</i> , 133 U. S. 496.....	14
<i>Witherspoon v. Duncan</i> , 4 Wall. 210.....	11, 14
<i>Wright v. Town of Hartville</i> , 13 Wyo. 497.....	27



# In the Supreme Court of the United States.

OCTOBER TERM, 1922.

---

THOMAS J. STOCKLEY ET AL., APPELLANTS,	} No. 74.
v.	
THE UNITED STATES OF AMERICA.	

---

*APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT.*

---

## BRIEF FOR THE UNITED STATES.

---

### STATEMENT OF CASE.

Stockley settled on the land in question on March 10, 1897, and made a formal homestead entry on November 13, 1905 (180). He resided on the land continuously from the time of settlement until about three months before the submission of final proof on January 5, 1909, his wife's health making it necessary that he move to Mooringsport (93, 109). He cultivated twelve acres each year and built a two-room house worth \$100 (109). On December 15, 1908, certain lands in Louisiana, of which the tract in controversy forms a part, were withdrawn from settlement, entry, or other form of appropriation, but existing valid claims were not affected (48). On that day the Commissioner of the General Land Office so



notified the local register and receiver. The instructions, which should be carefully read, will be found at page 51.

After giving all legal notices, Stockley submitted final proof on January 5, 1909 (180, 54-57). On January 16, 1909, he submitted a nonmineral affidavit (180, 52). On that date a receipt was issued to him (57). As printed in the record, it purports to be signed by the *register* (57). Another part of the record, however, shows that it is signed by the *receiver* (47).

In the meantime the act of June 25, 1910, 36 Stat. 847, had been passed. On July 2, 1910, under the provisions of that act, the previous order of December 15, 1908, was ratified and continued in full force and effect (59). The register and receiver at the time of the withdrawal order of December 15, 1908, were instructed to proceed "up to and including the submission of final proofs," but were enjoined not to "receive the purchase price or issue final certificates of entry," and were told to "suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects." Accordingly nothing further was done until February 10, 1912, at which time a special agent of the Land Office submitted an adverse report (61). The Commissioner of the General Land Office thereupon, under date of February 27, 1912, directed the local register and receiver to proceed in accordance with the circular of January

19, 1911, and in doing so to state that the special agent charges that (a) the land is mineral, and (b) that the claimant, at the time of making final proof, knew it was chiefly valuable for oil and gas (61).

The matter accordingly came on for hearing on December 28, 1912 (64). Both the Government and claimant introduced evidence (65-100), which will be referred to later. The evidence was closed December 30, 1912 (96). The register and receiver, on March 1, 1913, rendered their decision in favor of Stockley. They said that the proof disclosed that he had settled on the land before oil or gas was known in that section of the country; that his proof was made nearly five years after his entry; that this was before oil or gas had been discovered closer than five miles away; that a dry well existed between his land and these producing wells; and that the discovery of oil on his land long after final proof should not defeat his entry (107). On December 22, 1913, the Commissioner of the General Land Office, on a careful review of the whole evidence, reversed this decision and directed a cancellation of the entry (108). An appeal was thereupon taken to the Secretary of the Interior, who, on July 9, 1915, affirmed the decision of the Commissioner of the General Land Office, but with a modification which permitted the entryman to obtain a patent to the surface under the act of July 17, 1914, 38 Stat. 509 (119). A rehearing was apparently asked for on the ground that under date of July 16, 1910, the register and the receiver were informed by the Commissioner of the

General Land Office that the withdrawal order of December 15, 1908, had been vacated (62). But the rehearing was denied, the Secretary ruling that with respect to the land in question the withdrawal order had never been revoked (118). Stockley declined a surface patent, and his entry was there-upon formally revoked on January 21, 1916 (123).

The United States brought this suit on August 2, 1917, against Stockley and others to obtain a decree quieting title and to recover the value of the oil taken from the land under a lease (101) executed on March 17, 1910, by Stockley in favor of the Gulf Refining Company, one of the defendants, for which \$5,700 was paid (95). In the event that oil or gas in paying quantities was found, he was to receive a one-eighth royalty if the production did not exceed 200 barrels a day, and one-sixth if the production was in excess of that (103). The defendants plead in bar (16) that Stockley made formal proof on January 5, 1909; that a receiver's receipt on final entry was issued on January 16, 1909; that no contest or protest against the validity of this entry was initiated within two years; and that at the end of the two-year period Stockley, under the act of March 3, 1891, became the absolute owner and entitled to a patent. They further plead that on the hearing instituted by the Commissioner of the General Land Office to determine the character of the land, no evidence was introduced tending to show its mineral character; that the decision of the register and receiver in Stockley's favor was, under the rules, final; that the review and

reversal of that decision by the Commissioner of the General Land Office was arbitrary and unwarranted; and that the affirmance by the Secretary of the Interior of the latter's decision was likewise null and void. The plea in bar was overruled in a written opinion filed by the district judge on November 7, 1918 (39). The case was thereupon referred to a special master (41), who, after hearing all the testimony, recommended, on April 7, 1919, that a decree as prayed for be entered (139). Exceptions (152) to his report were overruled on July 17, 1919 (161). A decree in favor of the United States was rendered on August 4, 1919, and filed on August 12, 1919 (164). An appeal to the Circuit Court of Appeals was taken on September 23, 1919 (169). On March 24, 1921, that court affirmed the decree (186). An appeal to this court was taken on April 4, 1921 (200). The record was filed here on April 27, 1921.

The main propositions upon which we rely are four in number:

1. The receipt issued in this case was not a receiver's receipt upon final entry within the meaning of the proviso in §7 of the act of March 3, 1891, 26 Stat. 1098.

2. The decision of the register and receiver in favor of Stockley was reviewable by the Commissioner of the General Land Office even though no formal appeal was taken.

3. The Commissioner of the General Land Office had before him evidence upon which to base a finding

that the tract was known mineral land at the time Stockley submitted his final proof.

4. Independently of the nature of the testimony before the local land officers, the finding of the Land Department as to the character of the land is conclusive and unassailable.

The receipt issued in this case was not a receiver's receipt upon final entry within the meaning of the proviso in §7 of the act of March 3, 1891, 26 Stat. 1098.

This proviso has been under consideration in two cases:

*Lane v. Hoglund*, 244 U. S. 174.

*Payne v. Newton*, 255 U. S. 438.

But neither of these cases dealt with the question which is presented here as to the meaning of the words "receiver's receipt upon the final entry." The appellants, as we have seen, contend that the receipt which was issued to Stockley at the time he submitted his final proof, was the kind of a receipt which this proviso contemplates. The Government emphatically asserts the contrary.

At the outset it is important to note the instructions and limitations imposed by the General Land Office on the register and receiver in connection with the entry in question. Under date of December 15, 1908, they were told by the Commissioner (51):

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in

such cases receive the *purchase money* or issue *final certificates of entry*, but must *suspend the entries and proofs* pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects.

This of course was a direction *not to pass upon the final proofs*.

THE PROVISIO IN §7 CAN NEVER BECOME OPERATIVE AND THE TWO-YEAR PERIOD DOES NOT BEGIN TO RUN UNTIL AFTER THE REGISTER AND RECEIVER IN FACT PASS UPON THE FINAL PROOFS AND ISSUE A RECEIVER'S RECEIPT IF THE PROOF IS FOUND REGULAR IN ALL RESPECTS.

Obviously, the first inquiry is to ascertain the commonly accepted meaning of the words "receiver's receipt" when Congress passed the act of March 3, 1891, and the prevailing practice of the Land Office at that time in the issuance of patents. The duties of the register and receiver are prescribed by statute and regulations, and call for the exercise of judgment. By circular of October 21, 1878, they were instructed:

You will carefully examine homestead proof in each case, and if you find it correct in all respects, as required by law and instructions, you will write "approved" on the same and subscribe your names underneath. If anything be wanting to perfect the proof, call for supplemental affidavits and have the want supplied before transmitting the same to this office.<sup>1</sup>

---

<sup>1</sup> Copp's Public Land Laws, 1450 (1882).

The Commissioner of the General Land Office in calling the attention of the register and receiver to this instruction said, under date of September 17, 1883 (2 L. D. 199):

You will be careful to give the testimony and affidavit in each case critical examination \* \* \*. You must assume the initial responsibility of deciding whether the requirements of law and official instructions have been fully met.

This court has recognized that they must exercise judgment and discretion, for in *Parsons v. Venzke*, 164 U. S. 89, 92, it is said: "Whenever the local land officers *approve the evidences of settlement and improvement* and receive the cash price they issue a receiver's receipt."

Curiously enough, the homestead laws make no specific provisions for the issuance of a receiver's receipt, nor do they define its effect. Section 2291 of the Revised Statutes, as amended by the act of June 6, 1912, ch. 153, 37 Stat. 123, provides:

No *certificate*, however, shall be given or patent issued therefor until the expiration of three years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry \* \* \* proves by himself and by two credible witnesses, \* \* \*, then in such case he \* \* \* shall be entitled to a patent, as in other cases provided by law.

Section 2238 of the Revised Statutes, which deals with the fees and commissions allowed registers and receivers, provides in part:

Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely: \* \* \* Second. A commission of one per centum on all moneys received at each receiver's office. Third. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the *certificate therefor issued as the basis of a patent.*

This language points to the fact that the certificate (and not the receiver's receipt) is the basis upon which patent issues. And this at once suggests that when Congress used the words "receiver's receipt upon the final entry," as it did in the proviso in §7 of the act of March 3, 1891, it did so upon the supposition that a receiver's receipt was a receipt for the purchase price which was issued *simultaneously with the certificate of entry.* This, it would seem, was the prevailing practice. A general circular issued by the Commissioner of the General Land Office on October 1, 1880,<sup>1</sup> says, in dealing with the homestead laws:

An inceptive right is vested in the settler by such proceedings, and upon faithful observance of the law in regard to settlement and cultivation for the continuous term of

---

<sup>1</sup> Copp's Land Laws, 247 (1882).



five years, and at the expiration of that time, or within two years thereafter, upon proper proof to the satisfaction of the land officers (Forms 4-070, 4-369, and 4-370), and payment to the receiver of that part of the commissions remaining to be paid, as given in tables on page 24, the Receiver issuing his *receipt* therefor, the Register will issue his *certificate* (Forms 4-140 and 4-196) and make proper returns to this office as the basis of a patent or complete title for the homestead (p. 255).

Again:

In any case where the final proof shall be transmitted to the register and receiver, as contemplated in this act, and the full amount of money due shall be paid, they will carefully examine the proof, and, if no objection appears, proceed to issue the *receipt and certificate* in the case, and make proper returns to this office as the basis of a patent or complete title for the homestead, pursuant to existing laws (p. 257).

Forms of a receiver's final receipt (4-140) and of a final certificate (4-196) will be found accompanying the circular just mentioned. Copp's Land Laws, 292 (1882).

THE COURTS NOT INFREQUENTLY USE THE TERMS "RECEIVER'S RECEIPT" AND "CERTIFICATE OF ENTRY" AS THE EQUIVALENT OF EACH OTHER.

*Receiver's receipt.*—In *Parsons v. Venzke*, 164 U. S. 89, 92, the court says:

An entry is a contract. Whenever the local land officers approve the evidences of settle-

ment and improvement and receive the cash price they issue a receiver's receipt. Thereby a contract is entered into between the United States and the preemptor, and that contract is known as an entry.

In *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337, the court says:

It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman, and will in due course issue to him a patent. He is the equitable owner of the land.

*Certificate of entry.*—In *Witherspoon v. Duncan*, 4 Wall. 210, 218, the court says:

According to the well-known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting the facts, by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be a part of the public domain.

In *Guaranty Savings Bank v. Bladow*, 176 U. S. 448, the validity of a certificate of final entry under the homestead laws was under consideration. No reference is made in the opinion to a receiver's receipt, the certificate of final entry being treated as

the basis upon which patent issues. "The certificate," says the court, "was prima facie evidence of the right of the entryman to a patent, but the power rested with the Land Department, upon proper notice, to set it aside and cancel the entry, and thus take away from him that prima facie evidence. \* \* \* It does not transfer the title to the land from the United States to the entryman, and it simply furnishes prima facie evidence of an equitable claim upon the Government for a patent. \* \* \* This is the legal effect of such certificates."

TWO YEARS BEFORE THE PASSAGE OF THE ACT OF MARCH 3, 1891, CONGRESS USED THE WORDS "RECEIVER'S RECEIPT" TO CONVEY THE IDEA THAT IT IS A RECEIPT ISSUED AFTER THE FINAL PROOFS HAVE BEEN EXAMINED AND APPROVED, AND AS REPRESENTING THE LAST ACT TO BE DONE BEFORE SENDING THE PAPERS TO WASHINGTON FOR PATENT.

In § 6 of the act of March 2, 1889, 25 Stat. 854, Congress makes use of the words "receiver's final receipt" in dealing with the homestead laws. From the language used it is plain that the words are employed to express the last act done preparatory to sending the papers to the General Land Office at Washington. In other words, that the receipt is not issued until after the register and the receiver have passed upon the final proofs and found everything regular. Section 6 reads:

That every person entitled, under the provisions of the homestead laws, to enter a

homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled, etc.

It is to be noted that the receipt upon which Stockley relies as the receiver's receipt upon final entry, was a receipt issued *without either the register or the receiver passing upon the final proofs.*

THE SIMILARITY BETWEEN A RECEIVER'S RECEIPT  
AND A CERTIFICATE ON FINAL ENTRY IS STRIKINGLY  
SHOWN BY THE VERY SECTION UNDER CONSIDERA-  
TION.

This section deals with two similar but distinct matters. One provides, in effect, that patents shall be issued where lands are sold, subsequent to final entry, to bona fide purchasers prior to March 1, 1888; the other, that patents shall issue upon the expiration of two years from the issuance of a receiver's receipt upon final entry. Although dissimilar terms are employed, the underlying thought is the same. In one part of the section the language runs, "and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and *certificates* issued, and to which there are no adverse claims originating prior to final entry \* \* \* shall \* \* \* be confirmed and patented." In the other, "That after the lapse of two years from the date of the issuance

of the *receiver's receipt* upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent," etc.

IT IS OF COURSE WELL SETTLED THAT WHEN THE FULL EQUITABLE TITLE PASSES, THE PUBLIC LANDS BECOME SUBJECT TO STATE TAXATION; BUT UNTIL THIS OCCURS, THE STATES ARE POWERLESS TO TAX. UNDER THE CIRCUMSTANCES DISCLOSED BY THIS RECORD, THE LANDS NEVER HAVE BEEN SUBJECT TO STATE TAXATION.

*Witherspoon v. Duncan*, 4 Wall. 210.

*Wisconsin Central R. Co. v. Price County*,  
133 U. S. 496.

*Bothwell v. Bingham County*, 237 U. S. 642.

THE ORAL TESTIMONY INTRODUCED BY THE GOVERNMENT SHOWS THAT AT THE TIME THE ACT OF MARCH 3, 1891, WAS PASSED, A RECEIVER'S RECEIPT WAS NEVER ISSUED UNTIL THE FINAL PROOFS HAD BEEN EXAMINED AND APPROVED. ON JULY 1, 1908, A RADICAL CHANGE IN THIS PRACTICE TOOK PLACE.

The practice prevailing at the time the act of March 3, 1891, was passed was succinctly stated by Green, a law examiner in the General Land Office. On the hearing of the plea in bar he testified (p. 35):

Q. What was the custom then which prevailed in connection with the issuance of receipts and certificates, in 1891?

A. According to the instructions that were issued to registers and receivers, as soon as

final proof was submitted by the entryman, the local officers—the register and receiver, were to examine that proof, to pass upon the qualifications of the entryman, and to see that he was qualified to make his entry; and if he was qualified, and the proof was sufficient, to accept that proof as sufficient and to collect from him the fees and commissions, and immediately upon the collecting of fees and commissions, after the acceptance of the final proof, to issue to him a receipt upon final entry. The receiver did that—and simultaneously, the register issued a final certificate—both bearing same number. The receiver's receipt, upon final entry, and the register's final certificate bore the same number, and unless they did bear the same number and were issued on the same date, they were required to explain to the Commissioner of the General Land Office why they did not, because of the discrepancy.

Q. State whether or not, under the practice then prevailing, a final receipt was issued separately and independently of the certificate, or whether they were both issued at the same time?

A. They were both issued at the same time; although one was issued by the receiver—the receipt was issued by the receiver—and the final certificate by the register; and simultaneously, on the same date, and bearing the same number.

Q. State whether or not, under the practice prevailing at that time, the receipt for the money issued before the entry was approved.

A. No, sir; it did not. The entry had to be passed upon and approved and the proof had to be passed upon and accepted *before the receipt could be issued.*

On July 1, 1908, according to the testimony, the method of issuing receipts was changed. In speaking of the prevailing practice at the time Stockley submitted his final proof in January, 1909, the witness said:

Q. I will ask you to state then whether or not, according to the practice which prevailed in the land office at the time Stockley made his final proof, the issuance to him of a receipt on the form which I have shown you, constituted, within that practice, an approval of his final proofs?

A. It did not.

Q. According to the practice prevailing in the land office at the time Stockley made his final proof, what was necessary to be issued to him in order to constitute a proof of his entry and final proofs?

A. The passing on the final proof by the local officers and the acceptance of that final proof and the issuance of a final certificate thereupon.

Q. Was there any final certificate issued in the Stockley case?

A. There never was (p. 32).

Again, at page 36:

Q. Now, under the practice prevailing at the time of Stockley's final proof, was it necessary that the final certificate issue at the time the receipt was issued?

A. No, sir; it was not. The final certificate may never be issued.

Again, at page 29:

Q. State whether or not that receipt showed an approval of the entry or final proof of Thomas J. Stockley by the local land officers?

A. It did not; simply showed the payment to the receiver of that sum of money.

THE RULES UNDER WHICH THE RECEIPT IN QUESTION WAS ISSUED PLAINLY SHOW THAT IT IS NOT TO BE REGARDED AS A FINAL RECEIPT. RULE 28 READS:

The issuance of a receipt by a receiver of public moneys does not mean that the application, entry, proof, etc., in connection with which it is issued, is allowed or approved, or will be allowed or approved. It merely means that he has received the money and that it is in his custody or control until it is applied or returned (135).

THE DIFFERENCE IN THE FORM OF A RECEIVER'S RECEIPT IN VOGUE AT THE TIME THE ACT OF MARCH 3, 1891, WAS PASSED, AND THE RECEIPT ISSUED TO STOCKLEY, EMPHASIZES THE RADICAL DIFFERENCE IN THE NATURE OF THE TWO.

At page 125 of the transcript will be found the kind of receiver's receipt on final entry that was in use at the time the act just mentioned was passed. It should be compared with the receipt issued to Stockley (57). The difference between the two is manifest. One is specifically designated "Final receiver's receipt"; the other merely "Receipt."



THE LAND DEPARTMENT HAS GIVEN THE ACT IN QUESTION AN ADMINISTRATIVE INTERPRETATION IN HARMONY WITH OUR CONTENTION.

29 L. D. 539. 44 L. D. 115. 46 L. D. 496.  
47 L. D. 135.

IN VIEW OF ALL THIS WE ARE JUSTIFIED IN ASSERTING THAT THE RECEIVER'S RECEIPT ON FINAL ENTRY MEANS A RECEIPT ISSUED AFTER THE FINAL PROOFS HAVE BEEN EXAMINED BY THE REGISTER AND RECEIVER AND FOUND REGULAR IN ALL RESPECTS.

If since the adoption of the new system on July 1, 1908, a receipt is issued, as was done in this case, for fees paid before the final proof is examined by the register and receiver, the receipt obtains no validity as a "receiver's receipt upon the final entry" until the proofs have in fact been examined by them and found regular in all respects. This is forcibly shown by rule 31 (p. 135):

If, after a receipt has issued, the application, entry, proof, etc., can be allowed or approved, no further receipt for the money paid in connection therewith will be issued; but notice<sup>1</sup> of such allowance or approval will be given the person to whom the receipt issued. Such notations as "Application not yet allowed" or "Certificate not yet issued" are not necessary on the receipts nor the abstracts.

---

<sup>1</sup> On August 7, 1908, this instruction was issued: "The 'notice' in the case of a final entry will be a duplicate of the register's certificate, which will be prepared and promptly delivered to entrymen at the same time the original is issued. The duplicate copy must be plainly marked across its face 'Duplicate' " (37 L. D. 60.)

THE GOVERNMENT IS NOT CALLED UPON TO UPHOLD,  
AS A MATTER OF LAW, THE INSTRUCTIONS OF THE  
COMMISSIONER OF THE GENERAL LAND OFFICE  
ISSUED ON DECEMBER 15, 1908.

Whether the Commissioner had the power to issue these instructions is a matter of no moment. The fact is, he did issue them, and as a result the register and the receiver were forbidden to pass upon the final proofs. The two-year period begins to run not from the date when the receiver's receipt on final entry *should* have been issued but from the date of its *actual* issuance. If the register and the receiver should of their own volition refuse to take any action until compelled by mandamus, obviously the two-year period would begin to run not from the time the receipt on final entry should have issued but from the time it is issued in obedience to the writ.

**The contention that the action of the commissioner in reversing the register and the receiver is void because the Government failed to take a formal appeal from their decision is without merit in view of the repeated rulings of this court.**

*Knight v. U. S. Land Ass'n*, 142 U. S. 161.

*Orchard v. Alexander*, 157 U. S. 372.

*Hawley v. Diller*, 178 U. S. 481.

*Love v. Flahive*, 205 U. S. 195.

*Plested v. Abbey*, 228 U. S. 42.

*Kirk v. Olson*, 245 U. S. 225.<sup>1</sup>

---

<sup>1</sup> In *Gage v. Gunther*, 136 Cal. 338, it was held, in line with the reasoning of these cases, that inasmuch as Congress has imposed a supervisory duty upon the Secretary of the Interior, he can not divest himself of this duty by rules of his own creation.

In addition to this, the rules of practice of the Land Department place the matter beyond dispute. Rule 86 provides:

No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law. (44 L. D. 410.)

Rule 69 (44 L. D. 407) also distinctly recognizes the power to review without an appeal.

**The contention that no evidence was adduced at the hearing before the local land officers to justify a finding that the tract in question is mineral land, is devoid of merit.**

THE EVIDENCE ADDUCED IS IN MANY RESPECTS NOT UNLIKE THAT UNDER CONSIDERATION IN UNITED STATES *v.* SOUTHERN PACIFIC CO., 251 U. S. 1, WHERE THE GOVERNMENT WAS HELD ENTITLED TO A DECREE CANCELING PATENTS TO LAND ON THE GROUND THAT FRAUD WAS PERPETRATED IN ASSERTING THAT THE LANDS WERE AGRICULTURAL, WHEN IN FACT THEY WERE MINERAL LANDS, BEING CHIEFLY VALUABLE ON ACCOUNT OF THEIR OIL.

In that case, as in this, the contention was made that the presence of oil a considerable distance away afforded no basis for designating the land as mineral. "Opinion or surmise," so the argument ran, to quote from page 2 of the report just mentioned, "that oil might exist at an unknown depth, from four to ten miles from its nearest known occurrence is not convincing proof that the conditions in 1904 'were plainly such as to engender the belief that the land contained mineral deposits of such quality and in

such quantity as would render their extraction profitable and justify expenditures to that end.'"

Careful attention is invited to the evidence in that case as outlined in the opinion. The nearest producing wells were apparently three to four miles away. The court in its opinion says:

In 1903 and 1904 there were many producing wells about 25 miles to the east and many within a much shorter distance to the west and south, some within three or four miles (p. 8).

Between the outcrop and the Elk Hills upwards of two hundred wells had found the oil-bearing strata and were being profitably operated, several of the wells being on a direct line towards the lands in suit and within three or four miles of them (p. 12).

IN ORDER TO ESTABLISH THAT LANDS ARE VALUABLE FOR OIL, ACTUAL DRILLING OPERATIONS ARE UNNECESSARY. IT IS SUFFICIENT IF THE KNOWN CONDITIONS ARE SUCH AS REASONABLY TO ENGENDER THE BELIEF THAT THEY CONTAIN OIL OF SUCH QUANTITY AND QUALITY AS WOULD RENDER ITS EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END.

*United States v. Southern Pacific*, 251 U. S. 1.

THE TESTIMONY INTRODUCED AT THE HEARING TO DETERMINE THE CHARACTER OF THE LAND IS SUFFICIENT TO JUSTIFY A FINDING THAT IT IS MINERAL LAND.

Coming now to the testimony before the local land officers, Pyron, who said he had been with the Gulf Refining Company since November, 1909 (65), testified, it is true, that on January 5, 1909, his company had no information that would lead them to believe

the Stockley tract contained oil or gas (68); and further, that on January 5, 1909, and prior thereto, there were no indications of oil or gas on the land such as would put an ordinarily prudent person on notice that the land was more valuable for those purposes than for any other (75). But the witness was not there in 1909, as he himself testified (74), and did not become connected with the Gulf Refining Company until November, 1909 (65). He, however, said that the nearest oil well on January 5, 1909, was about three miles east (71); that the Trees Oil Company *completed* the drilling of a well about November 10, 1909, in section 27, T. 21 N., R. 16 W.; that this company *then* held under a lease a large block of territory surrounding the well, which was subsequently sold to the Standard Oil Company; that this company held between four and five thousand acres west of Jeems Bayou, in that township and range (73). While he said that this land *subsequently* proved to be very productive territory (73), it is nevertheless a significant fact that it was acquired *before* November, 1909. The acquisition of such a large acreage can be accounted for only upon the theory that the land was supposed to be valuable for oil. The witness also said the J. M. Guffy Petroleum Company had purchased, as early as 1905, the Potter tract, adjoining Stockley's land on the west. Although he said that he did not think it would be regarded as possible oil or gas land at that time, and that the price paid would indicate that it was not so considered, the fact nevertheless remains that the purchase of the Potter tract by an oil company was a

factor to be taken into consideration in determining the character of the Stockley land.

Webster testified that the nearest oil or gas well in January, 1909, was about three miles east. It is true that he testified there was nothing on the Stockley tract to indicate oil or gas on January 5, 1909 (78), but his testimony is entitled to little weight. While admitting, in referring to geological conditions, "there is something in that," his position is that a drill is the *only* test to determine the character of the land (79). He further testified that the Rives land immediately to the north was offered to the Gulf Refining Company in the early part of 1909 at \$1.00 an acre, and was refused. It is true that the refusal by this company to purchase is a factor of some weight, but the offer of the owners to sell to an oil company is also a factor.

Bell, who was in the employ of the J. M. Guffy Petroleum Company and the Gulf Refining Company from 1904 up to a year before the hearing (80), testified that in 1905 he bought the Potter tract adjoining the Stockley land (81). In speaking of this purchase he said: "We acquired the Potter's point, because some parties at Jefferson had the land for sale and *I thought possibly they wanted to lease*, as they did not state so, and *I went up there with Mr. Webster* and when they told me it was for sale I told them I would come back to Shreveport, that we were not buying any land, but he asked me to go and look at it, which I did, and I asked what they would take, as a matter of courtesy, thinking he would put a price of two or three dollars an acre

and I would not take it, but when he made the price I informed the Beaumont office that there was enough timber to pay for it, so we bought it" (84-5). On cross-examination he stated:

Q. You bought the Potter tract as an oil proposition?

A. No, sir; I simply bought it because there was timber enough on it to pay for it, and we would lose nothing on it by reason of minerals or nonminerals.

Q. Your company was not in the timber business?

A. No, sir; while in a way the company has one or two little plants in the country where they make barrels for oil, and in that way they are in the timber business (86).

This testimony is enough to convince anyone that the Potter tract was purchased because of its oil possibilities.

Before Stockley executed the lease to the Gulf Refining Company he attempted to lease to others. Guy testified that Stockley approached him in the early part of 1910, but that he could not handle the property and did not want it. When asked, "Did you at that time consider this land had mineral possibilities?" he answered, "Yes, sir" (99). When asked what were the nearest producing wells in January, 1909, he answered: "Well, I think about that time the nearest producing wells were right near Oil City, which would be three or four miles away." When asked if the developments spoken of would indicate to a practical oil man that this oil-bearing stratum would underlie Stockley's tract, he replied: "No, sir; *no more than a great deal of condemned ter-*



*ritory that lay in between Oil City and the Stockley tract, that has since worked out pretty good,"* etc. (99).

In addition to the oral testimony there was introduced in evidence Bulletin No. 429, issued by the Geological Survey, covering oil and gas in Louisiana, published in 1910. At pages 139-149 will be found a complete list of all of the oil and gas wells in the Caddo field. It will be observed that wells came into existence at different places in 1905, 1906, 1907, 1908, and 1909. Many were drilled on the south half of section 1, T. 20 N., R. 16 W. The Caddo Gas & Oil Company, for example, put in one on the SW.  $\frac{1}{4}$  of the SW.  $\frac{1}{4}$  of that section, and, to quote from this bulletin, "Derrick up April 19, 1908; drilling July 20 to December 20, 1908; a 2,500-barrel well from the 1,580-foot stratum; gravity 30° Baumé. The best well in the field" (p. 140). Wells were also drilled in the adjoining township to the north (T. 21 N., R. 16 W.). The bulletin, for example, reports that the Rogers No. 1 well was begun in section 24. "At 2,000 feet gas began to escape through cracks in the ground, and finally derrick and all fell in. Estimated capacity 40,000,000 cubic feet of gas in August, 1908" (p. 148). The Rogers No. 2 was drilled in the same section. "Drilling July to September 6, 1908; a big gasser (40,000,000 cubic feet) at 1,035 feet" (p. 148). -

In speaking of the J. C. Trees Oil Company No. 1 in section 27, on the Stiles tract, the bulletin says:

Completed December 6, 1908; yield 50 barrels of oil, with a large amount of gas, at 1,060



feet, January 20, 1909. The hole was deepened, and by pumping with a standard rig 300 barrels of oil and 300 barrels of water were produced daily. In February, 1909, the daily capacity was stated to be 125 barrels. This well is the farthest west in the field.

At page 110 the bulletin says:

For general purposes the Caddo field may perhaps be defined as a more or less quadrangular area in Caddo Parish, La., extending from Mooringsport on the south to Vivian on the north, and from the Louisiana-Texas state line on the west to Dixie on the east. It is located in the north corner of the Sabine uplift. The areas of greatest present development are shown on the index map and on Figures 12 to 15. However, even as far south as Shreveport gas has been found in considerable quantities at depths of less than 1,000 feet, and there are reasons for hoping that in various places throughout this great structural unit gas and oil may have been collected in paying quantities. Between such fields of future development there are doubtless extensive barren areas, and the localities that are productive will doubtless receive special names. In the Caddo field, as above defined, there are large areas that are barren of oil or gas.

The geological conditions are described in the bulletin at pages 119-129. At page 127 the bulletin says: "Four fairly well-defined oil and gas bearing zones are believed to be recognizable in the Caddo oil field. Of these at least two are found in practically every part of the field, although all vary more

or less in thickness, composition, and yield from well to well. These zones are," etc.

At page 130 the statement appears:

Small quantities of heavy oil are found in the Nacotoch sand west of James Bayou, in sections 27 and 22. Three wells furnish about 85 barrels daily; the Rogers wells, at Lewis, 30 barrels; the Vivian Oil Company's three wells in section 36, near Vivian, 150 barrels.

When this bulletin, setting forth the geological conditions, is carefully examined, it at once becomes apparent that the local land officers had before them both oral and documentary testimony sufficient to justify a finding that the lands were mineral at the time Stockley made his final application.

**Independently of the nature of the testimony before the local land officers, the finding of the Land Department as to the character of the land is conclusive and unassailable.**

*Steel v. Smelting Co.*, 106 U. S. 447.

*Barden v. Northern Pacific R. R. Co.*, 154 U. S. 288.

*Burke v. Southern Pacific R. R. Co.*, 234 U. S. 669.

*Cameron v. United States*, 252 U. S. 450.<sup>1</sup>

JAMES M. BECK,  
*Solicitor General.*

WILLIAM D. RITER,  
*Assistant Attorney General.*

SEPTEMBER, 1922.

---

<sup>1</sup> The decisions of subordinate Federal courts as well as State courts are explicit upon this point: *Duffield v. San Francisco Chemical Co.*, 198 Fed. 942, 944; *Le Fevre v. Amonson*, 11 Idaho, 45; *Wright v. Town of Hartville*, 13 Wyo. 497; *Nevada Exploration & Min. Co. v. Spriggs*, 41 Utah, 171; *Lane v. Cameron*, 45 App. D. C. 404; *Earl v. Morrison*, 39 Nev. 120.



## STOCKLEY ET AL. v. UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE  
FIFTH CIRCUIT.

No. 74. Argued November 20, 1922.—Decided January 2, 1923.

1. Section 7 of the Act of March 3, 1891, c. 561, 26 Stat. 1099, applicable to homestead and other entries, provides that, after the lapse of two years from the date of the issuance of "the receiver's receipt upon the final entry," when no contest or protest against the validity of the entry shall be pending, the entryman shall be entitled to a patent conveying the land entered, and the same shall be issued to him. *Held*:
- (a) That the limitation began to run when a homesteader submitted his final proofs, paid the fees and commissions then due, and obtained the receiver's receipt therefor, although the proofs were not passed upon and no register's certificate was issued. P. 537.
  - (b) The original meaning of the statute in this regard cannot be altered to suit an altered practice of the Land Department whereby examination of proofs and issuance of register's certificate are postponed when receiver's receipt issues, instead of issuing the certificate and the receipt together, as was customary when the statute was enacted. P. 538.
  - (c) The statute applies even though the receipt was issued contrary to the instructions of the Commissioner of the General Land Office. P. 541.
  - (d) When the period of the statute has run in favor of a homestead entry, the question whether the land was mineral in character is no longer open. P. 543.
2. Where an order of the President withdrew a body of public lands from all forms of appropriation, "subject to existing valid claims"; an existing preliminary homestead entry, attended by compliance with the requirements of the homestead law up to the time of the order, was within the exception, and when followed, after the withdrawal, by the issuance of a receiver's receipt upon final entry, and the lapse of two years thereafter, was protected under the Act of 1891, *supra*, from attack under a subsequent protest alleging that the land entered was mineral. P. 543.
- 271 Fed. 632, reversed.

APPEAL from a decree of the Circuit Court of Appeals affirming a decree of the District Court which ordered that possession of a tract of land be restored to the United States with damages for oil and gas extracted from it.

*Mr. S. L. Herold*, with whom *Mr. R. L. Batts* and *Mr. D. Edward Greer* were on the brief, for appellants.

*Mr. Assistant Attorney General Riter*, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

The receipt issued in this case was not a receiver's receipt upon final entry within the meaning of the proviso in § 7 of the Act of March 3, 1891, 26 Stat. 1099.

This question was not involved in *Lane v. Hoglund*, 244 U. S. 174, and *Payne v. Newton*, 255 U. S. 438.

It is important to note the limitations imposed by the General Land Office on the register and receiver by instructions of December 15, 1908, allowing receipt of applications and proofs touching claims antedating the withdrawal, but forbidding receipt of the purchase money or issuance of final certificate, pending investigation, during which entries and proofs were to be suspended.

The proviso in § 7 can never become operative and the two-year period does not begin to run until after the register and receiver in fact pass upon the final proofs and issue a receiver's receipt, if the proof is found regular in all respects.

Obviously, the first inquiry is to ascertain the commonly accepted meaning of the words "receiver's receipt" when Congress passed the Act of March 3, 1891, and the prevailing practice of the Land Office at that time in the issuance of patents.

The duties of the register and receiver are prescribed by statute and regulations, and call for the exercise of judgment. Circular of October 21, 1878, Copp's Pub. Land Laws, 1415; Instruction September 17, 1883, 2

L. D. 199. This Court has recognized that they must exercise judgment and discretion. In *Parsons v. Venzke*, 164 U. S. 89, 92, it is said: "Whenever the local land officers approve the evidences of settlement and improvement and receive the cash price they issue a receiver's receipt."

Curiously enough, the homestead laws make no specific provisions for the issuance of a receiver's receipt, nor do they define its effect. The language of Rev. Stats. §§ 2291, 2238, points to the fact that the certificate (and not the receiver's receipt) is the basis upon which patent issues. And this at once suggests that when Congress used the words "receiver's receipt upon the final entry," in the proviso in § 7 of the Act of 1891, it did so upon the supposition that a receiver's receipt was a receipt for the purchase price which was issued simultaneously with the certificate of entry. This, it would seem, was the prevailing practice. Circular October 1, 1880, Copp's Pub. Land Laws, 247, 292. The courts not infrequently use the terms "receiver's receipt" and "certificate of entry" as equivalents. Receiver's receipt: *Parsons v. Venzke*, *supra*; *United States v. Detroit Lumber Co.*, 200 U. S. 321. Certificate of entry: *Witherspoon v. Duncan*, 4 Wall. 210; *Guaranty Savings Bank v. Bladow*, 176 U. S. 448.

Two years before the passage of the Act of 1891, Congress used the words "receiver's receipt" as denoting a receipt issued after the final proofs have been examined and approved, and as representing the last act to be done before sending the papers to Washington for patent. Act of March 2, 1889, § 6, 25 Stat. 854.

The receipt upon which Stockley relies was issued without either the register or the receiver passing upon the final proofs.

The similarity between a receiver's receipt and a certificate on final entry is strikingly shown by the very section under consideration.

It is of course well settled that when the full equitable title passes, the public lands become subject to state taxation; but until this occurs, the States are powerless to tax. Under the circumstances disclosed by this record, the lands never have been subject to state taxation. *Witherspoon v. Duncan*, 4 Wall. 210; *Wisconsin Central R. R. Co. v. Price County*, 133 U. S. 496; *Bothwell v. Bingham County*, 237 U. S. 642.

The oral testimony shows that at the time the Act of 1891 was passed, a receiver's receipt was never issued until the final proofs had been examined and approved. On July 1, 1908, a radical change in this practice took place.

The rules under which the receipt in question was issued plainly show that it is not to be regarded as a final receipt.

The difference in the form of a receiver's receipt in vogue at the time the Act of 1891 was passed, and the receipt issued to Stockley, emphasizes the radical difference in the nature of the two.

The Land Department has given the act in question an administrative interpretation in harmony with our contention. 29 L. D. 539; 44 L. D. 115; 46 L. D. 496; 47 L. D. 135.

Whether the Commissioner had the power to issue the instructions of December 15, 1908, is a matter of no moment. He did issue them, and as a result the register and the receiver were forbidden to pass upon the final proofs. The two-year period begins to run, not from the date when the receiver's receipt on final entry should have been issued, but from the date of its actual issuance. If the register and the receiver should of their own volition refuse to take any action until compelled by mandamus, obviously the two-year period would begin to run not from the time the receipt on final entry should have issued but from the time it is issued in obedience to the writ.



MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is a suit in equity brought by the United States, as plaintiff, against the appellants, as defendants, by which a decree was sought adjudging the plaintiff to be the owner of a tract of land in the Parish of Caddo, Louisiana, enjoining all interference therewith, and requiring the defendants to account for the value of oil and gas extracted by them therefrom.

The United States District Court for the Western District of Louisiana, upon the report of a master, found for the plaintiff and entered a decree in accordance with the prayer of the bill ordering a restoration of possession and awarding damages against some of the defendants, including Stockley, for about \$62,000.

The case comes to this Court by appeal from the decree of the Circuit Court of Appeals affirming the decree of the District Court. 271 Fed. 632.

The defendants denied plaintiff's title and alleged that the land was the property of the defendant Stockley by virtue of his compliance with the homestead laws of the United States.

The conceded facts are that in 1897 Stockley took possession of the land and on November 13, 1905, made a preliminary entry thereof as a homestead. He complied with the provisions of the Homestead laws, submitted final proof, including the required non-mineral affidavit, paid the commissions and fees then due, and on January 16, 1909, obtained the receiver's receipt therefor. Prior to that time, viz, on December 15, 1908, a large body of public lands, embracing within its boundaries the land in question, was withdrawn by an order of the President of the United States from all forms of appropriation. The withdrawal order was expressly made "subject to existing valid claims." The receiver's receipt, omitting unnecessary matter, is in the following words:



"Received of Thomas J. Stockley . . . the sum of Three Dollars and One Cents, in connection with Hd. Final, Serial 0188, for: [lands described] 71.25 acres. . . ."

On March 17, 1910, Stockley leased the property in question to the defendant the Gulf Refining Company, which company subsequently drilled wells and developed oil. The rights of the other defendants are wholly dependent upon the title asserted on behalf of Stockley.

On July 16, 1910, after the report of a special agent confirming Stockley's claim of residence upon and cultivation and improvement of the lands, the Commissioner of the General Land Office ordered the case "clear-listed and closed as to the Field Service Division." Subsequently, and more than three years after the issuance of the receiver's receipt, viz., on February 27, 1912, a contest was ordered by the Commissioner of the General Land Office before the local register and receiver upon the charge that the land was mineral in character, being chiefly valuable for oil and gas, and that when Stockley made his final proof he knew or, as an ordinarily prudent man, should have known this fact. After a hearing, the register and receiver decided in favor of Stockley, but the Commissioner of the General Land Office reversed the decision and ordered the entry canceled. The Secretary of the Interior affirmed the Commissioner with a modification allowing Stockley to obtain a patent for the surface only, under the provisions of the Act of July 17, 1914, c. 142, 38 Stat. 509.

The defendants contended that the Commissioner of the General Land Office and the Secretary of the Interior were without authority to entertain this contest because prior thereto full equitable title had vested in Stockley and he had become entitled to a patent by virtue of the provisions of § 7 of the Act of March 3, 1891, c. 561, 26 Stat. 1095, 1099. That section, so far as necessary to be stated, provides:

"That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor."

The court below rejected defendants' contention, holding that the receipt issued to Stockley was not a "receiver's receipt upon the final entry" for the reason that, in the view of that court, a final entry could not become effective until the issuance of the certificate of the register. In other words, it was the opinion of the lower court that in order to constitute a final entry within the meaning of the statute above quoted, there must be an adjudication upon the proofs and the issuance of a final certificate, evidencing an approval thereof.

We think the language of the statute does not justify this conclusion. It must be assumed that Congress was familiar with the operations and practice of the Land Department and knew the difference between a receiver's receipt and a register's certificate. These papers serve different purposes. One, as its name imports, acknowledges the receipt of the money paid. The other certifies to the payment and declares that the claimant on presentation of the certificate to the Commissioner of the General Land Office shall be entitled to a patent.

The evidence shows that prior to the passage of the statute, and thereafter until 1908, the practice was to issue receipt and certificate simultaneously upon the submission and acceptance of the final proof and payment of the fees and commissions. In 1908 this practice was changed, so that the receipt was issued upon the submis-

sion of the final proof and making of payment, while the certificate was issued upon approval of the proof and this might be at any time after the issuance of the receipt. The receiver and register act independently, the former alone being authorized to issue the receipt and the latter to sign the certificate. The receipt issued to Stockley was after submission of his proof and payment of all that he was required to pay under the law. No certificate was ever issued by the register.

It is contended by the Government that the receiver's receipt named in the statute should be restricted to a receipt issued simultaneously with the register's certificate after approval of final proofs, and that, after the change of 1908 in the practice of the Department, a receipt issued before such approval does not come within the meaning of the statute. Such a receipt, it is contended, obtains no validity as a "receiver's receipt upon the final entry" until after the proof has in fact been examined and approved.

We cannot accept this conception of the law. A change in the practice of the Land Department manifestly could not have the effect of altering the meaning of an act of Congress. What the act meant upon its passage, it continued to mean thereafter. The plain provision is that the period of limitation shall begin to run from the date of the "issuance of the receiver's receipt upon the final entry." There is no ambiguity in this language and, therefore, no room for construction. There is nothing to construe. The sole inquiry is whether the receipt issued to Stockley falls within the words of the statute. In *Chotard v. Pope*, 12 Wheat. 586, 588, this Court defined the term entry as meaning: "That act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer known, in the legislation of several States, by the epithet of an entry-taker, and corresponding

very much in his functions with the registers of land-offices, under the acts of the United States." It was in this sense that the term "final entry" was used in this statute. Having submitted to the proper officials proof showing full compliance with the law, and having paid all the fees and commissions lawfully due, Stockley had done everything which the law required on his part and became entitled to the immediate issuance of the receiver's receipt, and this receipt was issued and delivered to him. No subsequent receipt was contemplated or required. From the date of the receipt the entry may be held open for the period of two years, during which time its validity may be contested. Thereafter the entryman is entitled to a patent and the express command of the statute is that "the same shall be issued to him." *Lane v. Hoglund*, 244 U. S. 174; *Payne v. Newton*, 255 U. S. 438.

That Stockley's acts constituted final entry is borne out by rulings of the Land Department. Thus in *Gilbert v. Spearing*, 4 L. D. 463, 466, Secretary Lamar said:

"When the homestead application, affidavit and legal fees are properly placed in the hands of the local land officers, and the land applied for is properly subject to entry, from that moment the right of entry is complete and in contemplation of law the land is entered."

See also *Iddings v. Burns*, 8 L. D. 224, 226.

We are not at liberty to add to or take from the language of the statute. When Congress has plainly described the instrument from whose date the statute begins to run as the "receipt upon the final entry," there is no warrant for construing it to mean only a receipt issued simultaneously with the certificate or one issued after the adjudication on the final proof, which might be—and in this instance was—postponed indefinitely. It was to avoid just such delays for an unreasonable length of time—that is, for more than two years—that the statute was enacted. *Lane v. Hoglund*, *supra*, and Land Depart-

ment decisions cited. The purpose and effect of the statute are clearly and accurately stated by the Commissioner of the General Land Office in Instructions of June 4, 1914, 43 L. D. 322, 323, in the course of which it is said:

"There is no doubt that Congress chose the date of the receiver's receipt rather than of the certificate of the register as controlling, for the reason that payment by the claimant marks the end of compliance by him with the requirements of law. It would be manifestly unjust to make the right to a patent dependent upon the administrative action of the register, subjecting it to such delays as are incident to the conduct of public business and over which the claimant has no control. Payment, of which the receiver's receipt is but evidence, is, therefore, the material circumstance that starts the running of the statute, inasmuch as a claimant is and always has been entitled to a receipt when payment is made."

It is urged, however, that in any event the receiver exceeded his authority in issuing the receipt, since the Commissioner of the General Land Office, on December 15, 1908, had instructed the register and receiver, among other things, as follows:

"Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects."

These instructions were issued, as shown upon their face, in view of the Presidential withdrawal order of the same date. We suggest, without deciding, that, inasmuch as the withdrawal order was expressly made subject to



existing valid claims, and Stockley's claim was obviously existing and valid, this instruction of the Commissioner was itself without authority, since, as applied to Stockley, it was in conflict with the withdrawal order. This has nothing to do with the question as to whether the lands were, in fact, mineral in character, which is another and different matter dealt with later. However, Stockley, as already shown, did, in fact, make final entry and the receiver did, in fact, issue and deliver his receipt thereon. The case, therefore, falls within the terms of the statute and must be governed by it, unless the receipt be held for naught on the ground that it was issued contrary to the Commissioner's instructions. But the very object of the statute was to preclude inquiry upon that or any other matter, except as provided by the statute, after the expiration of two years from the date of the receiver's receipt. In *United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476, this Court had under consideration § 8 of the same act (26 Stat. 1099), limiting the time within which suits by the United States might be brought to annul patents. That section, it was said, recognizes "that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the Government, such conveyances should, after the lapse of a prescribed time, be conclusive against the Government, and this notwithstanding any errors, irregularities or improper action of its officers therein." It was said further: "Under the benign influence of this statute it would matter not what the mistake or error of the land department was, what the frauds and misrepresentations of the patentee were, the patent would become conclusive as a transfer of the title, providing only that the land was public land of the United States and open to sale and conveyance through the land department."

In *United States v. Chandler-Dunbar Water Power Co.*, 200 U. S. 447, 450, this section of the act was again under

consideration. A patent was attacked as void for the alleged reason that the land which it purported to convey had been reserved for public purposes, and upon that ground the application of the statute was denied, but this Court said:

"It is said that the instrument was void and hence was no patent. But the statute presupposes an instrument that might be declared void. When it refers to 'any patent heretofore issued,' it describes the purport and source of the document, not its legal effect. If the act were confined to valid patents it would be almost or quite without use."

To hold that the receipt here under consideration falls outside the terms of the statute would be to defeat the purpose of the statute and perpetuate the mischief which it sought to destroy. Prior to the decision in the case of *Jacob A. Harris*, 42 L. D. 611, 614 (quoted with approval in *Lane v. Hoglund*, *supra*), it had been held that the statute did not affect the conduct or action of the Land Department in taking up and disposing of final proof of entrymen after the lapse of the two-year period (*In re Traganza*, 40 L. D. 300), but this view was sharply challenged and overruled in the *Harris Case*, where it was said:

"Passed, primarily, to rectify a past and to prevent future abuses of the departmental power to suspend entries, the proviso is robbed of its essential purpose and practically repealed by the decision in the *Traganza case*."

The effective character of the receiver's receipt being established, the question, after the lapse of the two-year period, as to whether the land was mineral bearing, was no longer open. Inquiry upon that ground was then foreclosed, along with all others. *Payne v. Newton*, *supra*.

The bar of the statute likewise prevails, notwithstanding the executive withdrawal of December 15, 1908. The validity of that order is, of course, settled by the decision.

in *United States v. Midwest Oil Co.*, 236 U. S. 459, but, as already stated, there is excepted from the operation of the order "existing valid claims." Obviously this means something less than a vested right, such as would follow from a completed final entry, since such a right would require no exception to insure its preservation. The purpose of the exception evidently was to save from the operation of the order claims which had been lawfully initiated and which, upon full compliance with the land laws, would ripen into a title. The effect of a preliminary homestead entry is to confer upon the entryman an exclusive right of possession, which continues so long as the entryman complies in good faith with the requirements of the homestead law. *Stearns v. United States*, 152 Fed. 900, 906; *Peyton v. Desmond*, 129 Fed. 1, 12. Since it is conceded that Stockley made such an entry in 1905 and his compliance with the requirements of the homestead law prior to the withdrawal order is not questioned, it follows that he had, when that order was issued, an existing valid claim, within the meaning of the exception. The action of the Commissioner of the General Land Office, therefore, in directing a contest against Stockley's entry three years after the issuance to him of the receiver's receipt was unauthorized and void.

*The decree of the Circuit Court of Appeals is reversed and the cause remanded to the District Court with directions to dismiss the bill of complaint.*